

**PRESS COMPLAINTS COMMISSION**

**SUBMISSION TO THE CULTURE, MEDIA AND SPORT SELECT  
COMMITTEE**

February 2003

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<sup>1</sup> A summary of the issues with a personal viewpoint from Professor Robert Pinker



## EXECUTIVE SUMMARY

- The Press Complaints Commission welcomes this inquiry and the scrutiny by the Select Committee of its procedures and policies. In particular, we are keen to show how we serve the public — and how the Code protects the rights of ordinary people.
- The ability of newspapers and magazines to regulate themselves is a fundamental aspect of press freedom. This is widely recognised across the globe — and at home, where the principles of press self-regulation have enjoyed consistent cross party support. (Intro)
- But freedoms such as this bring responsibilities with them, and this Report is designed to show how the PCC — an independent body, dominated by lay or public members, which administers the press Code and deals with complaints from members of the public about possible breaches of it — has discharged its own duties as part of the system of self-regulation. (Intro)
- The PCC's central aim is to resolve disputes — a mission, in fact, given to it in the first Calcutt Report. Since the mid-1990s, the Commission has succeeded in fostering a culture of conciliation among newspapers, to the benefit of ordinary complainants. In 2002, editors resolved or offered to resolve 96% of all complaints that raised a possible breach of the Code. (A1)
- Complaint levels have increased since the PCC was established to an average over the last four years of just under 2,600 each year — a 40% increase on the first four years of the Commission's existence. This is a sign of wider public knowledge about, and trust in, our work. (A2)
- Over the last twelve years there has been a marked decline in the proportion of complaints about inaccuracy, from a peak of 75% to 56% in 2002 — one of the signs that standards of accuracy continue to improve. There has been a concomitant rise in complaints about privacy and discrimination. (A2)
- The vast majority of complainants, over 90%, are ordinary people. They come from every country of the UK, and every region. (A2)

- The complaints process — thanks to a Helpline, website and initiatives to make the Code accessible in languages other than English — is easy and transparent. (A3)
- Speed is vital to the work of the PCC. In 2001 and 2002, the average time it took to deal with a complaint was just 32 working days — although complaints through lawyers took up to 40% longer. (A4)
- The PCC works under the terms of a tough *Complainants Charter* which has helped reduce the complaints handling time by 27% (or 12 working days) since 1997. A customer satisfaction survey among complainants in 2002 found very high levels of satisfaction. (A4)
- Key to the work of the PCC is the Code, the authority of which has been enhanced by its incorporation into editors contracts of employment, by important legislation, by the rulings of the Court of Appeal in crucial cases under the Human Rights Act (HRA) and by its inclusion in the training courses all new journalists undergo. (B1).
- The Code itself has been considerably strengthened over the last twelve years (B2) — and is now, as noted above, part of the contracts of employment of most national and regional editors. (B5)
- While it is impossible empirically to measure the success of the Code, the way in which it has raised standards in key areas on the back of PCC adjudications — particularly on privacy, children, subterfuge, victims and others — is clearly demonstrable. (B3)
- The Code is a flexible document, and the industry has worked in partnership with Government and others to tackle issues of importance to press and public — such as Human Rights, Data Protection and others. (B5)
- There are many myths about privacy. In fact the vast majority of people who complain about intrusion are ordinary people; only 5% are in the national public eye. More privacy complaints are received by the PCC about regional newspapers than national ones. (C1)
- Over the years the PCC has built up vitally important privacy jurisprudence across the range of privacy issues. All these

demonstrate that there are no absolutes; every case is part of a balancing act. The Courts have recognised that such an operation is best undertaken by a specialist body such as the PCC, and have themselves drawn on PCC case law in ruling on privacy matters (C2).

- The PCC recognises that public figures are as entitled to privacy as any other — and are given equal protection under the Code, as well as the same service by the PCC when they complain. The families of public figures have also received the full protection of the Code. (C3)
- The PCC has also developed the concept of public interest in a cogent, authoritative manner. It does not believe that public interest equates to what interests the public. In adjudicating it will apply rigorous tests to any public interest defence put forward by an editor. (C4)
- Far from proving to be a back-door privacy law for famous people, important decisions under the HRA have actually strengthened the position of self-regulation, and the authority of the Code. (C5)
- The PCC is aware that one of its main tasks is to ensure people are aware of their rights and know how to complain. It has therefore put in place a comprehensive programme of public information. (D1)
- While there is always more to do, independent research shows that PCC name recognition — at 80% in a very recent poll - is already high. Furthermore, members of the public support a system with speedy dispute resolution, free to complainants and funded by the newspaper industry, at its heart. (D1)
- In particular, we have undertaken a substantial amount of work which aims to empower the most vulnerable — asylum seekers, the mentally ill, ethnic minorities, among others — to be able to complain. (D2)
- The Commission is keen to ensure an active presence throughout the countries of the United Kingdom and the regions of England. A programme of exhibitions and road shows has been to every part of the country. Special initiatives have been taken in Scotland. (D3)
- Training tomorrow's journalists is vital to the long-term future of self-regulation — and the PCC plays an important role in training courses.



Knowledge of the Code is now an essential component of the exams trainee journalists take. (D4)

- The PCC is also committed to making information available easily and quickly to those who want it through its website and through speaking engagements. This is backed up by a generous donation of advertising space by publishers themselves to highlight the existence of the Commission. (D5)
- A number of the procedural problems highlighted by the 1993 Select Committee report have been rectified. In particular the PCC has a clear majority of lay or public members, themselves appointed by an independent Appointments Commission. (E1)
- Lay members are drawn from a wide variety of backgrounds — and regional editors ensure that the voices of Scotland, Wales, Northern Ireland and the English regions are heard on the PCC. (E1)
- The power to issue a critical adjudication is a very strong sanction — one strengthened by the ability of the Commission to refer the terms of serious or calculated breaches of the Code to an editor's employer. This has been deployed twice, with powerful effect. (E3)
- Fines and compensation would destroy the conciliatory nature of the self-regulatory system — and, by turning it into a quasi-legal system, make it inaccessible to the vast majority of individuals. (E3)
- While the Commission will take up third party complaints in exceptional circumstances, it will not normally consider them — a principle it shares in common with the statutory regulators in the UK and most other Press Councils in Europe. (E4)
- Third party and own volition complaints — which share the same characteristics — would create a two-tier system of redress, disadvantaging ordinary people and unacceptably politicising the PCC. (E4)
- Comprehensive media monitoring is — for many of the same reasons — philosophically undesirable and practically impossible. However, the PCC does from time to time monitor standards in key areas to inform

its public information work and to highlight certain issues among editors. This has shown very high levels of Code compliance. (E5)

- By providing a great deal of information about its complaints procedures and the outcome of complaints, the PCC seeks to ensure it is accountable to the public and to the industry. The scrutiny of the Courts (through judicial review) and the Select Committee add another important layer of accountability. (E6)
- The PCC fits well into a European tradition of press self-regulation dating back over 70 years. Among EU States there are statutory press controls in only two countries. In most emerging democracies self-regulation is the chosen path for industry and Government. The Commission is committed to a programme — often funded by the British Government — to assist in that process. (F1, F2, F4)
- The PCC is in the vanguard in Europe in promoting greater co-operation among European Press Councils. The Alliance of Independent Press Councils of Europe, and its new website, help the PCC ensure it is providing the best service for ordinary people. (F3)
- The PCC recognises that it is not perfect and that it can always seek to improve its service. We believe our service to ordinary people is a very good one — and also that standards of reporting with regard to the rights of ordinary individuals have been substantially raised in recent years. (Conclusion)
- We welcome constructive and practical proposals for reform. Most of the Select Committee's recommendations from 1993 have now been implemented. (Annex 2)
- The alternatives to the PCC are impractical and undesirable. Statutory controls would be impossible to implement under the HRA, and privacy laws would be inaccessible to ordinary people. Strong, independent self-regulation works for everyone — and we are committed to ensuring it continues to do so. (Conclusion / Annex 4)

## INTRODUCTION

### Self-regulation is a key part of press freedom

1. Two fundamental truths about the media are beyond political controversy. The first is that a free press is the essential foundation of a democratic society; the second that, concomitantly, state controls on the press are the first act, and indeed underpinning, of any authoritarian regime.
2. It is no coincidence that when Churchill and Roosevelt met for the first time in the Second World War at Reykjavik to agree the terms of the Atlantic Charter, its first, crucial principle was freedom of expression and speech<sup>2</sup>. Such freedoms — of which freedom of the press is *the* essential component — have been the cornerstone of all the most important international treaties designed to buttress and extend democracy since then<sup>3</sup>.
3. But freedom of the press is about *more* than the freedom to express views and publish news free from the censor's pen. It is also about the ability of newspapers and magazines to choose a form of regulation for themselves: without such a choice, the press itself cannot truly be free. This was a point recognised by the former Home Secretary, Jack Straw, during the passage of the Human Rights Act 1998, when he made clear that self-regulation is an aspect of freedom of expression:

The Government have always made clear our support for effective self-regulation as administered by the Press Complaints Commission under its Code of Practice. We have also said we have no plans to introduce legislation creating a general law of privacy ... On self-regulation, the new Clause provides an important safeguard by emphasising the right to freedom of expression. Our intention is that that should underline the consequent need to preserve self-regulation (*Hansard*, 2nd July 1998, col. 541).

4. Yet with these freedoms comes great responsibility. Newspapers and magazines wield great power — and in most mature civil societies,

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<sup>2</sup> Churchill, *The Grand Alliance* (1950), Ch. 24 especially.

<sup>3</sup> Indeed, the point has recently been acknowledged by the United Nations — see Section F1, p. 203

they choose to make clear that they wish to wield it responsibly, and within a framework of high ethical standards.

5. That is exactly what the British newspaper and magazine industry did in 1991 when it established the Press Complaints Commission. For the first time in its three hundred year history, it agreed to submit to a set of tough self-regulatory rules — binding all publications equally through an industry-wide Code — and the authority of an independent body to oversee them. The degree of that sea-change cannot be overstated.

Cross party support for these principles — and backing from the Courts

6. Governments of both political parties since then have supported the right of the industry to regulate itself in this manner — and the work of the Press Complaints Commission. (Indeed no Government of any political persuasion has sought to impose special controls on the press since the abolition of the Licensing Act in 1689).
7. That is why during the passage of the Human Rights Act, which the Select Committee is examining, the Government moved to safeguard the position of self-regulation<sup>4</sup>.
8. More recently, the Secretaries of State for Culture, Media and Sport, and for Trade and Industry reconfirmed the Government's commitment to self-regulation in a letter to *The Times*:

The Government remains committed to the self-regulation of the press through the Press Complaints Commission and the [Communications] Bill does not affect this in any way (*The Times*, 11<sup>th</sup> December 2002).

9. This cross-party support for newspaper self-regulation echoed the Conservative Government's 1995 White Paper on Privacy and Media Intrusion, which concluded that:

A free press is vital to a free country. Many would think the imposition of statutory controls on newspapers invidious because it

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<sup>4</sup> See para. 3 above, and Section C5

might open the way for regulating content, thereby laying Government open to charges of press censorship. The Government does not find the case for statutory measures in this area compelling. It believes that, in principle, industry self-regulation is much to be preferred (Privacy and Media Intrusion, Cmd. 2918, July 1995., pp. 4-5).

10. More recently, the Shadow Secretary of State for Culture, Media and Sport, John Whittingdale MP, spoke during a debate on the Communications Bill about the importance of a:

belief in press freedom, which we would all echo. In the UK statutory regulation of the publishing industry has always been viewed as unnecessary and dangerous, with any benefits being far outweighed by the loss of freedom that it might entail. The Government have on many occasions made clear their support for the current system of press self-regulation as administered by the Press Complaints Commission. That reflects the belief, as guaranteed by the Human Rights Act 1998, that freedom of expression and opinion are rights that must be strictly protected in a free and democratic society (Hansard, 3<sup>rd</sup> December 2002, col. 800)

11. Furthermore, a number of crucial rulings under the Human Rights Act — discussed later in this submission — along with the result of actions for judicial review of the PCC, have strengthened its authority and that of the Code. The Courts, as Mr Justice Silber said in the case of Anna Ford, recognise the Commission is a body whose membership and expertise makes it much better equipped than the courts to resolve the difficult exercise of balancing the conflicting rights [of] privacy and of the newspapers to publish.<sup>5</sup>

#### The Select Committee inquiry and the PCC submission

12. Despite this clear support across parties for the work of the Commission, it is of course absolutely right that it is, from time to time, independently scrutinised. This occurs occasionally in the Courts; and each time the PCC had been taken to judicial review its procedures and policies have been given a clean bill of health by the

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<sup>5</sup> This is dealt with more fully in Sections C5 and E6.

Administrative Court, and in one case the Court of Appeal. The PCC welcomes this wide-ranging inquiry by the Select Committee, particularly with its emphasis on the rights of ordinary people.

13. Last time the predecessor to this Select Committee scrutinised the work of the PCC in 1993, self-regulation and the Code were barely two years old — and were still suffering from disagreeable birth pains.
14. There was understandable concern about the independence of the PCC. Its service to the public was arguably too slow and lacked transparency. The Code was still a novelty to most editors who were only gradually getting used to its strictures — and, indeed, the Code itself was too weak in some areas. And the Commission was finding it difficult to cope with some of the more high profile cases of media intrusion presented by the break-up of two Royal marriages. But even then, the essence of the Commission's work — a dispute resolution procedure tailored to the needs of ordinary people — was starting to shine through, and we have continued to build on this.
15. A lot has changed since the 1993 inquiry — both radically to improve the Commission's service, and to continue to the process of raising standards of reporting. Among the most important developments are these:
  - The PCC's appointments procedures have been reformed to ensure the clear independence of the Commission from the industry it is regulating.
  - The Code has been toughened in many key aspects — and is now, at twelve years old, genuinely part of the culture of all newsrooms in the way it could never have been in its early years. It is also — as a result of the way the PCC and the industry have worked in partnership with Government — a key part of many pieces of legislation. The PCC's rulings on privacy, in particular, have been given extra weight and authority by crucial judgements under the Human Rights Act, which draws from the Commission's case law in this area.
  - The PCC's sanctions have been sharpened. It has powers to refer cases of serious breaches of the Code to publishers — who now almost without exception include Code compliance in editors' contracts of

employment — and to raise its own complaints when there are clear public interest reasons for doing so.

- The Commission has transformed its standards of service on the back of a tough *Complainants Charter* — making its procedures the quickest and most effective of any regulatory body. The clear winners from this are ordinary people who make complaints.
  - The PCC has fashioned important and far reaching jurisprudence on privacy — for people in the public eye and ordinary people alike — which has been acknowledged by the Courts, and echoed in key Human Rights judgements.
  - The protection of the vulnerable has been placed at the heart of our work — both in terms of decisions under the Code, and in terms of key initiatives designed to ensure our service is as widely known as possible.
  - Important work has been undertaken to ensure that the Commission is as open and accessible as possible to people across the country.
16. In its core roles — dispute resolution and the protection of the vulnerable — the Commission is now regarded as a model for countries seeking to set up similar bodies. Indeed, the British Government itself has recently sponsored two projects — in the Commonwealth and among some former Soviet Republics — to help establish self-regulation in countries where none existed before. A similar initiative a few years ago in Bosnia-Herzegovina, under the auspices of the International Community, led to the setting up of a self regulatory Press Council under the international chairmanship of the Chairman of the PCC.
17. This submission — alongside an accompanying volume of supporting evidence — does not seek to make the philosophical case for self-regulation or to promote the freedom of the press. Nor does it tell the *whole* story of self-regulation — which is about day to day behaviour in thousands of publications up and down the country, and of which the PCC is only a tiny, if very visible, part.

18. The threefold reasons d tre of the PCC are to administer a Code, to deal effectively with the complaints (the vast majority of which are from ordinary people), and to ensure that its services are well known. This submission therefore seeks to:
  - a) **set out our service to the public** — including an examination of who makes complaints, how they are resolved, and how satisfied those individuals are;
  - b) **examine how the Code has worked in action** — including an analysis of the way it has developed, evidence of how it has raised newspaper standards, and examples of how we have worked in partnership with Government;
  - c) **outline how the Commission deals with issues of personal privacy** — including the development of the PCC s jurisprudence, an analysis of who is affected by media intrusion, the impact of the Human Rights Act 1998, privacy and public figures and public interest;
  - d) **set out the way in which the PCC seeks to publicise its services** — concentrating in particular on the way we seek to protect the vulnerable and ensure we are known and represented across the United Kingdom;
  - e) **examine the PCC s procedures** — in particular its appointments procedures, the independence of the PCC, the work of the Code Committee, the transparency of its own complaints procedures, and a number of other issues including own volition / third party complaints, and media monitoring; and
  - f) **establish the PCC in a European and international context** — outlining our work to help promote self-regulation in countries not as blessed as ours with a history of press freedom, and establishing that the international trend in media policy is toward self-regulation and away from state controls.
19. There is an annex in this volume which contains other relevant documentation, including an analysis of how some of the concerns of the 1993 Select Committee report have been met. An Appendix to this submission — in a further volume — contains supporting material.



**SECTION A**  
**SERVICE TO THE PUBLIC**



## A (1) The PCC s role as conciliator, and its benefits to the public

### The philosophy of dispute resolution

1. It was never the intention of those who established the PCC that it should simply be a toned down, free version of the legal system with complaints investigations pitting opposing sides against one another in large, set-piece confrontations. Even if such a system could be kept free it would still be lengthy, adversarial and cumbersome, prone to exploitation by lawyers to the detriment of the ordinary complainant<sup>6</sup>.
2. For these reasons, the PCC s main aim in dealing with complaints is to offer members of the public a more useful and user-friendly mechanism for obtaining redress for their grievances — with speed at its heart: the Commission has always recognised that justice delayed is justice denied — and accordingly always seeks to resolve breaches of the Code to the satisfaction of the complainant, without the need for lengthy formal adjudication. This mission was actually given to the Commission by Calcutt in his First Report: We recommend that the PCC should have clear conciliation and adjudication procedures designed to ensure that complaints are handled with the minimum of delay. Wherever practical it should first seek conciliation <sup>7</sup>. It has fulfilled that mission in abundance.
3. The PCC is, therefore, at heart an alternative dispute resolution mechanism, although any newspapers that refuse to remedy a breach of the Code are at risk of a critical adjudication. It is deliberately not like the state-appointed watchdogs that have supervisory powers over whole industries and are designed to protect public health and safety and the consumer in general. Rather, the PCC is a conciliation service for those people who have personally experienced a breach of the press Code of Practice. It is also particularly designed to be of assistance to specific groups of often vulnerable people who previously had no effective redress against newspapers towards whom they had a grievance.

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<sup>6</sup> See Section E3

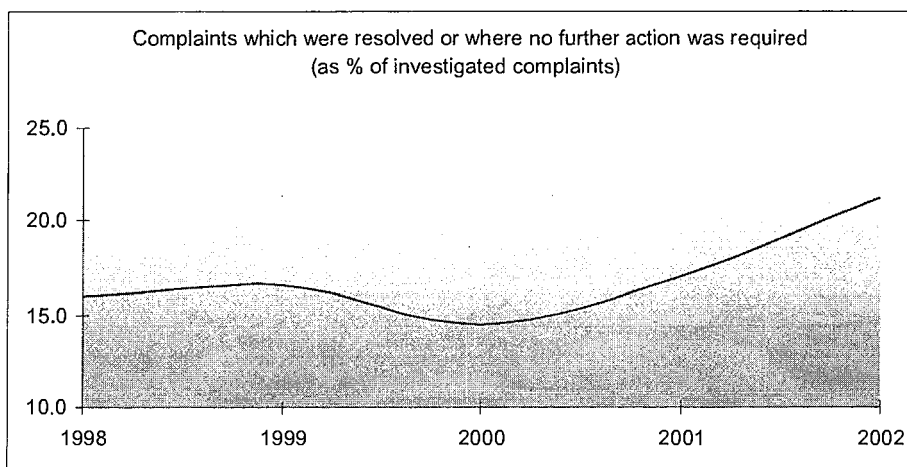
<sup>7</sup> Committee on Privacy and Related Matters, Cmnd. 1102, May 1990 (p.70)

Fostering a new culture

4. Before 1991 there was not a great culture of conciliation in the British newspaper industry. Complaining about a newspaper was intimidating and likely to be counter-productive. Some newspaper editors simply ignored the old Press Council and, in its last years, ridiculed complainants. Indeed, it is widely accepted that many editors did not at first recognise the creation of the PCC as representing a great sea-change in their relationships with their readers and in particular with those who complained about them. The PCC in its early years struggled to imbue its adjudications with great authority and as a result found it difficult to promote a culture of conciliation, because editors were simply not fearful of the consequences if they refused to resolve a complaint.
5. Other Sections in this submission detail how the authority of the PCC has grown over the years. As it did so, and as publishers, politicians and the public began to take more notice of its findings, the process of encouraging editors to resolve complaints has become easier. Gradually, a new culture has been instilled.
6. Part of the reason for this has been the increasing authority of the Commission's adjudications. In the early years, these often lacked consistency and failed to give full reasoning for a decision. Since the mid 1990s, adjudications have always been clearly based on precedents, reference to which is now included in all rulings and published with them on the website. Full reasoning is also given for every Commission decision — on adjudicated complaint as well as on those where no breach of the Code is established.
7. Furthermore, editors have learned that the PCC takes into account whether they are prepared to resolve any complaint if the Commission is called to make a formal decision. An early admission that something has gone wrong, and proposals to put it right, will be recognised in any adjudication. In common with other conciliation bodies, the Commission accepts that there can be cases where a complainant rejects an offer that is actually an adequate remedy to the complaint. In these circumstances the Commission will decline to pursue the matter any further, explaining to the complainant why the

offer was suitable. The offer will often remain open to the complainant as a sign of a newspaper's good will.

8. The logical outcome of this policy is that editors offer to resolve far more complaints than previously, and at a much earlier stage — as the graph below sets out.



9. The real beneficiaries are, of course, complainants. Nowadays they do not have to wait very long for an offer of remedial action. Furthermore, knowing that editors are making genuine and constructive efforts to resolve complaints both cools their understandable anger about the original breach of the Code and also gives peace of mind about the outcome. Real dialogue between the parties, channelled through the PCC, promotes harmony and swift settlements to complaints, where a more adversarial — or adjudication-only — system would provoke hostility and inevitable delay.
10. In 2002, the PCC had to adjudicate on just 17 breaches of the Code. In ALL of the other cases where there had been a breach of the Code — 381 complaints — an editor made a suitable and proportional offer to resolve the matter. In other words, such is the willingness now to resolve complaints that editors offer to resolve 96% of cases that raise a breach of the Code. Details of these cases for 2002, which show the range of cases that the PCC deals with, are in Appendix I.

#### Resolving complaints in practice

11. Against this background, PCC complaints officers are trained to examine ways complaints might be resolved, taking into account the

feelings of the complainant. As an independent party, the officer casts an objective eye over the matter and works towards what might be a fair and reasonable outcome to the complaint — bearing in mind the Commission's case law which might instruct on how certain sorts of complaint can be resolved.

12. It is important to emphasise that all complainants are told as soon as they complain that the first task of the Commission is to resolve complaints and that this is what the officer dealing with their complaint will be working towards. However, complainants can of course at any stage ask the Commission itself to take a formal view on their complaint, although in practice most are happy with the conciliation process because it promises the opportunity of a quick and meaningful resolution to their complaint.
13. In practice, it is possible to resolve complaints in a number of ways, depending on the gravity of the complaint, whether the complainant wants further publicity, what the editorial policy is on correcting mistakes, or what the personal feelings of the editor are. While editors are ultimately responsible for breaches of the Code, each newspaper usually has a dedicated senior member of staff — for instance the managing editor — dealing with the detail of complaints, ensuring that they are handled quickly and with authority. Outlined below are a number of common ways of resolving a complaint, although the list is by no means exhaustive and resolutions might involve a combination of the measures below or different and specific remedies designed for the special circumstances of the case.
  - *Clarification.* A clarification might be appropriate when something has been omitted from the original article or the piece is ambiguous or arguably misleading. It stops short of an admission by the newspaper that there was anything wrong with its article and will often begin [the complainant] has asked us to make clear that... , or We would like to make clear that .
  - *Correction and apologies.* Straightforward factual errors are usually dealt with most cleanly and simply by the publication of a correction. Corrections to serious errors should also include an apology — as required by the Code, which states an apology must be published where appropriate .

- *Letter for publication.* An offer by an editor to publish a complainant's letter is particularly appropriate when: the complainant has an alternative point of view but no substantive factual objections to the piece; where there are a number of minor inaccuracies; where the newspaper has an anonymous and reliable source but no other corroborative material; or where a complainant might for reasons of privacy wish to make anonymous objections to a piece.
  - *Follow-up article.* A newspaper might offer to publish an interview with, or article written by, a complainant, if there are sufficient points to make in response to a previous story.
  - *Tagging the newspaper's records.* This is an increasingly popular way of resolving complaints and is offered in conjunction with all of the above remedies or on its own. It amounts to the newspaper's electronic database and cuttings library being tagged with the complainant's objection to ensure that the mistake is not repeated. It is also a way of carrying warnings about privacy, perhaps informing journalists that a complainant has objected to a particular picture or is concerned to protect their children from intrusion. Most national newspapers now share their electronic databases so corrections are available to all newspapers — including PA News - simultaneously.
  - *Private letter of apology.* In many cases further publicity is not an attractive idea for the complainant. Particularly in privacy cases or intrusion into grief, people are most concerned to receive an acknowledgement that the Code has been breached or to read some words of regret from the editor without having to worry about the trauma of reading their name in the paper again. A private apology, often drafted with the help of a complaints officer, and perhaps tagged to the file as outlined above, provides this remedy for complainants.
  - *Private undertaking.* Similarly, undertakings given by the editor about the future conduct of the newspaper and its journalists might also give the complainant some peace of mind and complaints have been resolved on this basis.
14. Often, an editor will offer a combination of the measures outlined above. Sometimes, they go further than the Code requires and offer

holidays, goods such as flowers and champagne, gifts of specialist equipment such as wheelchairs, and, on some occasions, money. Such offers are left entirely to the editor and are not solicited by complaints officers, as it is not within the Commission's remit to deliver such resolutions. Nevertheless, they do occur from time to time when editors want to make a special effort to make amends.

### Conclusion

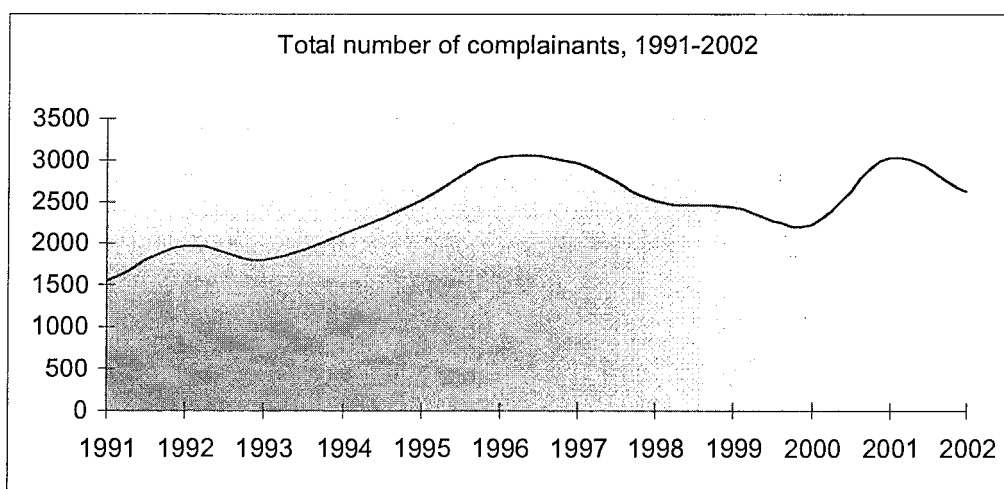
15. A key advantage of the PCC over any statutory mechanism or one involving fines is that these sorts of quick, common-sense and meaningful resolutions are increasingly achievable, thanks to the culture of conciliation that the PCC has promoted. In a fast-moving news environment people want their point of view published, an inaccuracy corrected or a breach of privacy remedied as quickly as possible — a point Calcutt recognised in his blue-print for the PCC. This is the prime reason that people complain. Only a flexible and conciliatory system like the PCC's — backed up with the powerful threat of a critical adjudication if things are not sorted out — can deliver it. As subsequent Sections set out, fines, compensation or statutory powers would introduce delay, legal fees and confrontation, and severely limit a complainant's options for swift redress.



**A (2) Who complains — and what about?**

Total numbers of complaints received

1. The number of complaints received by the PCC has been rising steadily in the years since the Commission was established in 1991. In the Commission's view this is the result of:
  - a consistently higher profile for the PCC and its adjudications;
  - our proactive programme — set out in Section C — to raise the profile of the PCC and make sure people have the information to complain when necessary;
  - easier complaints procedures — particularly the ability to complain by email; and
  - greater authority for the Commission itself in public perception.
  
2. In the first year of its existence, the PCC received 1,520 complaints; that figure rose steadily and the number of complaints averaged out at 1,836 during the first four years. Since then the number of complaints has gone up considerably to an average over the last four years of 2,579 — an increase of 40%. The table below illustrates this<sup>8</sup>

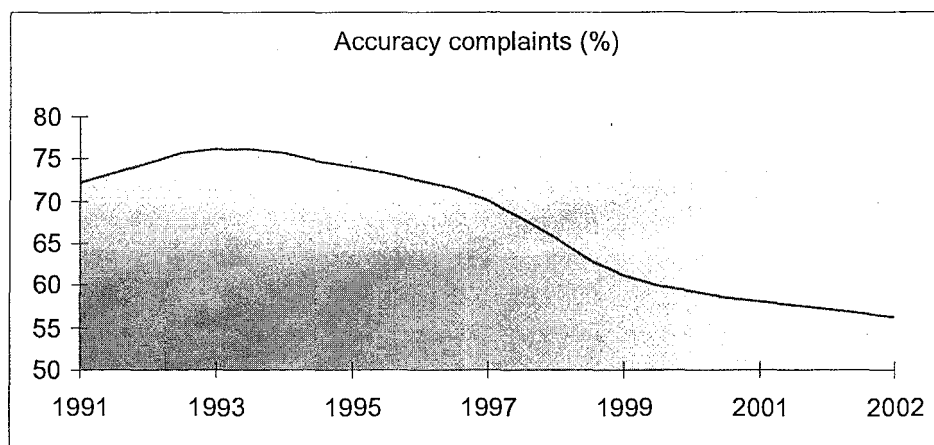


<sup>8</sup> The figure for 1996 was — at that point — an historical high as the result of the substantial number of complaints the PCC received about coverage of the Euro '96 football championships.

The Commission interprets this general rise not as a sign that standards are falling, but — as set out above — as a result of wider knowledge about, and accessibility to, the Commission's services.

Types of complaint

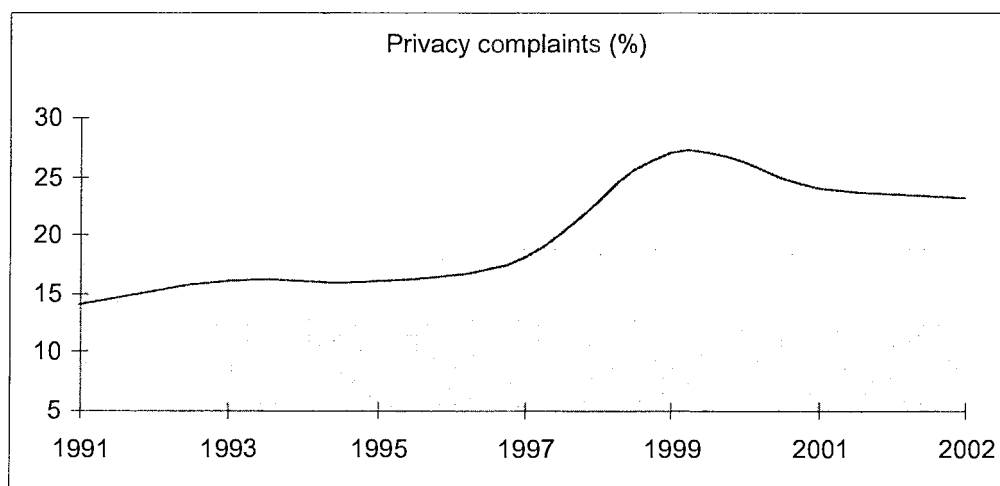
3. There have been a number of trends over the last twelve years in the issues under the Code of Practice that individuals have complained about. As the following paragraphs show, this has been principally:
  - a marked reduction over time in the number of complaints about accuracy in reporting;
  - a steady increase in the number of complaints about privacy; and
  - a similarly steady rise in complaints about discrimination.
4. In 1991, 72% of complaints were brought under the three Clauses of the Code relating to accuracy<sup>9</sup>. By 2002, this had fallen by over one fifth to 56%, as the following table shows.



5. There has at the same time been a steady rise in the number of complaints brought under the various privacy Clauses of the Code (privacy, children, hospitals, innocent relatives, victims of crime, grief

<sup>9</sup> Since 1998, these three Clauses have been joined together in the first two Clauses of the Code.

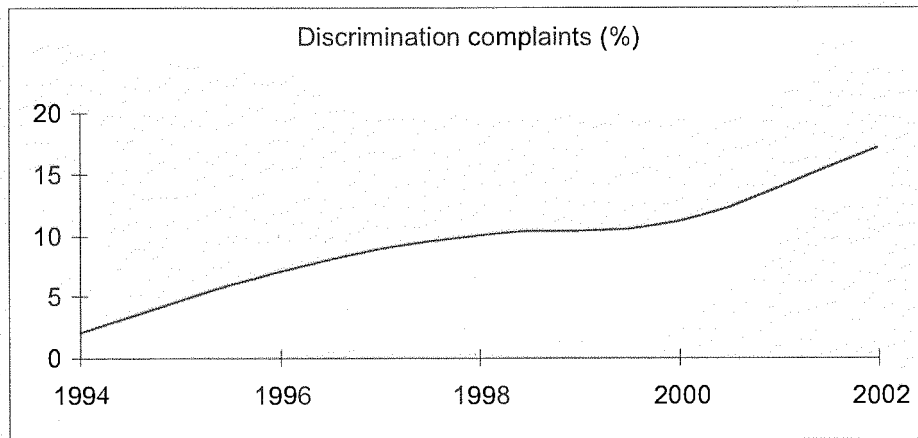
and shock) — from 14% in 1991 to 23% in 2002 (after peaking at 27% in 1999). This table illustrates it:



6. Part of the increase in privacy complaints has come about because of a higher profile for the PCC on privacy issues — not least in the wake of the death of Diana, Princess of Wales — but also a substantial toughening of the Code in January 1998. However, the increase in complaints has not been mirrored in a rise in breaches of the Code and upheld complaints — as we discuss in Section B3<sup>10</sup>.
7. The PCC has, over the years, received a significant number of discrimination complaints. This has, again, risen steadily — as the next Table shows — particularly since 1996. This is the result of:
  - reporting in 1996 of the Euro 96 football championships;
  - the aftermath of the events of September 11<sup>th</sup> 2001, and particular concerns about the reporting of issues relating to Islam and the Muslim community; and
  - continued political and public debate about, and media reporting of, issues concerning refugees and asylum seekers. (Some of these complaints are also multiple ones about the same article that the Commission has received from individuals within lobby groups.)

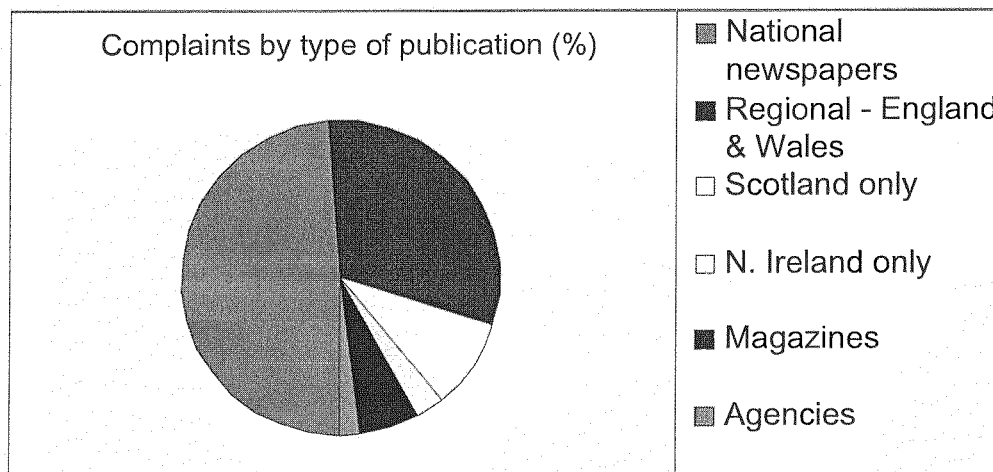
<sup>10</sup> See in particular, pages 63-4.

However, it is important to note that this had not led to an increase in the number of breaches of the Code relating to discrimination against named individuals (see Annex 3).



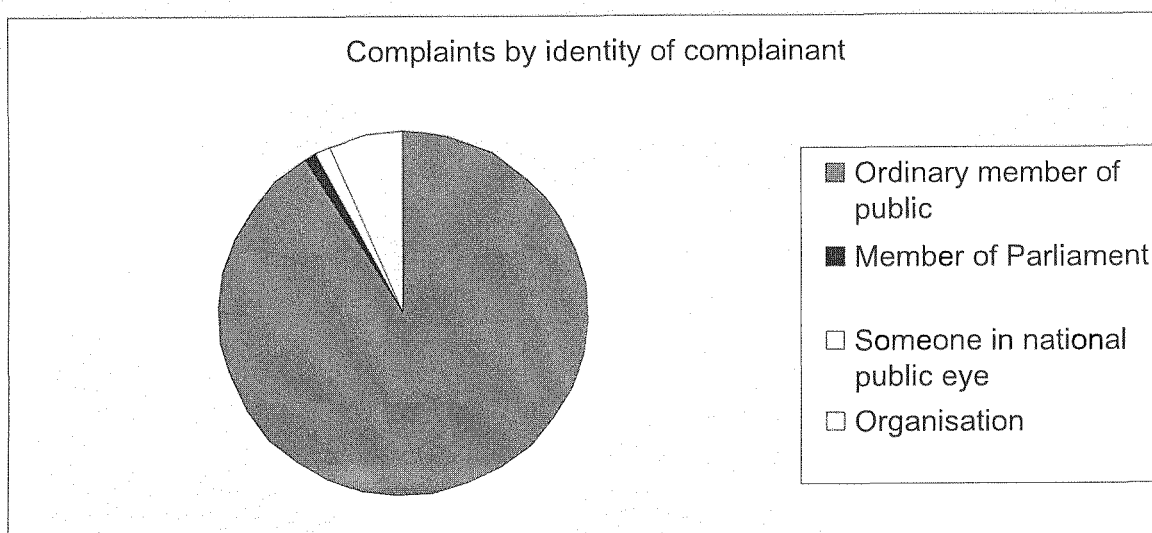
The publications complained about

- The type of publication against which individuals have made complaints has remained fairly consistent over the years. As the Table below — which sets out the average numbers for the last five years — shows, about half of all complaints are about national newspapers and about a third concern the regional press in England and Wales.

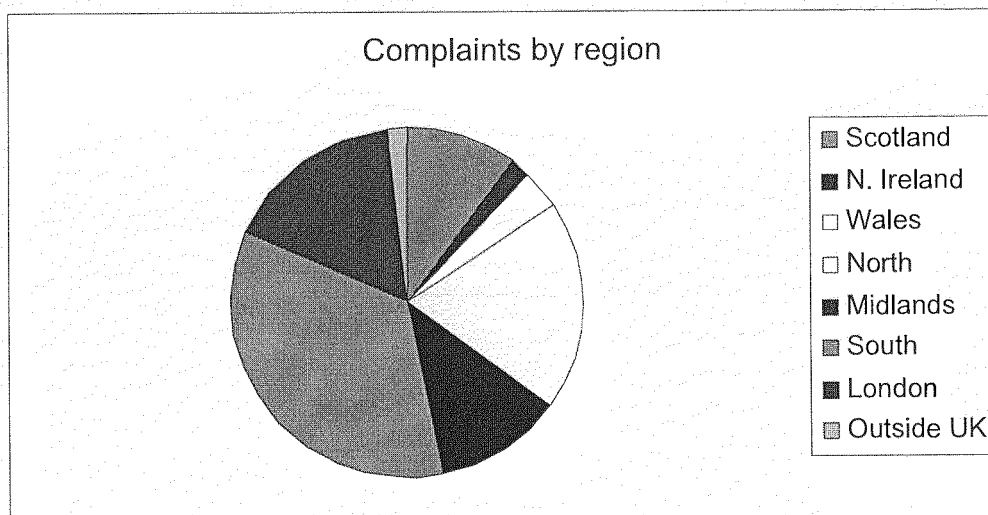


Who are the complainants?

9. The PCC has undertaken a careful analysis of the complaints it received in 2002 to assess who complainants are, and where they come from. Part of this is to identify if there are areas of the country the Commission needs to target in its ongoing programme of regional public information (see Section D3).
10. That analysis showed that in 2002 (which was on every indicator typical of previous years) more than nine in ten of the people who complained to us were ordinary individuals who had been temporarily caught up in some problem with the media. Just under 3% of complainants - half of them MPs — were national public figures, as the Table below shows.



11. Complainants are relatively well spread around the country as well: complaining is not just a metropolitan London activity. The Table overleaf demonstrates this.



12. The only area that gives the Commission some concern is the relatively low number of complaints emanating from Wales. The PCC will therefore prioritise Wales as an area for proactive public information work in 2003/4 — including giving extra publicity to its Welsh language literature.
13. In view of the Select Committee's terms of reference, a further analysis specifically relating to privacy complaints is included in Section C1.

**A (3) Putting things right : making the complaints process easy and transparent**

1. The initial — and in many ways most important — part of the complaints process is the framing of the complaint by the concerned party. The PCC strives to ensure that ordinary people, without any previous experience in dealing with the media or the need for expensive legal advice, are able easily to register their concerns about newspaper behaviour and gain quick redress for matters that may have had a major effect upon them.
2. The first step is to make sure that information about how the PCC works is generally accessible. Along with its widely-distributed literature, the Commission offers two other services to ensure that all people are aware of, and able to use, the complaints process.
  - *Helpline.* During office hours a member of staff will be on hand to give prompt (90% of all calls are answered within four rings) and general advice. There is a separate line for people from Scotland, who are able to contact the PCC at the cost of a local call. The PCC's phone number is listed in all telephone directories.
  - *Website.* Our website - [www.pcc.org.uk](http://www.pcc.org.uk) - is updated regularly and constitutes a full, and practical, resource of information about the complaints process, including specific advice on how to deal with press harassment. Recently, it has been expanded to offer a service for students — and any interested party — that answers frequently-asked questions about the PCC and the philosophy of self-regulation<sup>11</sup>. In addition, complaints can now be made on-line.
3. The PCC has a range of literature to help people make a complaint. In 2002, 3354 copies of our How to Complain leaflet (a copy of which is at Appendix II) were distributed, together with 3872 copies of the Code of Practice. As this documentation covers all aspects of the complaints process, every person who notified the PCC of an intention to raise a complaint was provided immediately with the means to do so.

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<sup>11</sup> For more information on the website, see p. 163

4. The Commission recognises that there may be a number of people for whom our literature may not be immediately accessible. It therefore has take steps to ensure that:
  - the Code of Practice and How to Complain booklets have been translated into Bengali, Urdu, Welsh and Gaelic, with further literature in Chinese, Arabic and Somali;
  - there are large print and audio copies of literature available on request; and
  - we provide a Textphone for deaf and hard of hearing persons.
5. The Commission also provides a range of literature targeted at specific groups of people — such as patients or school children - outlining to them which sections of the Code would be relevant to their circumstances. Appendix III contains an example of such information.
6. Having received the relevant literature, a complainant is able to specify in what way the publication has acted in breach of the industry s Code of Practice and give a full indication of the circumstances that have necessitated the complaint. If the complainant has any difficulties — of literacy or language, for example — then the PCC is able to help them to formulate the complaint. A complaints officer will always be able to make suggestions or take dictation so that such difficulties do not prohibit the complaint.
7. The PCC merely requires the complainant to send a letter, fax or email containing this information, together with a copy of the article, for a complaint formally to be registered. It will then be assessed as to whether it raises issues that require further investigation.
8. It may well be, at this stage, that the PCC is unable to help the complainant further as the issue that has been raised does not fall within the bounds of the Code or the PCC s jurisdiction This might be for a number of reasons — principally because it turns out that the complaint concerns:



- the broadcast media;
  - advertisements or promotions in newspapers;
  - a contractual dispute with the newspaper or contains material in regard to which there is ongoing or impending legal action. (The Commission is, however, able to place complaints on hold until the relevant proceedings have been concluded and start an investigation at that point);
  - a matter of taste, such as the inclusion of provocative photographs, or editorial selection of material. The PCC is not an arbiter about good taste nor would it seek to impose restrictions on what an editor may include in his or her newspaper, provided that its content does not breach any of the Clauses of the Code of Practice;
  - an article published over one month before the complaint or more than one month since the cessation of any correspondence between complainant and newspaper. (This time-limit does *not* act as a bar to the investigation of complaints that have been unavoidably delayed. The Commission is prepared to consider each case on its merits and will assess any exceptional circumstances that the complainant wishes to put forward to explain the delay. All complaints, in which the reason for the delay has been legitimate, are taken up by the Commission.)
9. In the above circumstances, the PCC will respond to the complainant's letter within three working days of its receipt, making clear the reasons why it will not be investigating the matter. Where appropriate, it is able to refer to complaints to other organisations — such as the Advertising Standards Authority, Broadcasting Standards Commission or relevant Trading Standards body — under whose remit the matter more appropriately falls. At this stage, as in all stages of the process, the complainant is able to query the decision or ask for a reconsideration by the Commission.
10. If the complaint falls within the ambit of the Code but does not appear to raise a *prima facie* breach, then it will be presented to the Commission for a formal decision. The Commission will then take a view based on the evidence submitted. If it decides that no breach of the Code has been established, the complainant will be informed promptly about the terms of the judgement and the reasoning behind it.

11. Any significant complaint, which requires further investigation, is assigned to a specified Complaints Officer, who will be in charge of the case until it is either resolved to the satisfaction of the complainant or presented to the Commission for a decision under the Code. The officer is able to offer ongoing advice during the processing of the complaint and is accessible by telephone, letter and email. This guarantees that the complainant can remain up-to-date with the complaint's progress and has a specific person with whom to liaise at all times.
12. A weekly meeting is always held under the Chairmanship of a lay Commissioner to assess the progress of complaints. This ensures a clear lay input throughout the process of a complaint.
13. In its handling of complaints, the PCC guarantees total transparency at all times — and in line with procedures laid down by the Administrative Court<sup>12</sup>. At the conclusion of an investigation, the Commission will only consider material upon which the complainant has had a full opportunity to comment. The complainant — again in line with the procedure of the Administrative Court — will always be given the last word before a decision is reached to ensure that his or her overview on the entire complaint is retained. In practice, this means that the Commission's assessment pays full regard to what the complainant has had to say in regard to the investigation. It is also important to note that where a newspaper or magazine whose editor sits on the Commission is being investigated, he or she takes no part in any decision. If there is an adjudication, the editor concerned sees no papers and leaves the Commission meeting for the duration of the discussion.
14. This transparency is retained even after the Commission has come to a decision. Obviously, while the Commission strives to be balanced and fair, its verdicts cannot always meet with the approval of all complainants. The Complaints Officers remain available to discuss the Commission's decision with the complainant and help to explain its reasoning. Often, complainants are satisfied with the outcome after further discussion about it.

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<sup>12</sup> The PCC's procedures have been reviewed twice by the Administrative Court, and on each occasion given a clean bill of health. See Section E6 for further details.

15. However, complainants are also able to question the factual basis underlying the decision. The Commission has always made clear that it is happy to reconsider a complaint in its entirety should any significant misunderstanding be suggested or any new evidence come to light. The Commission's decision, therefore, is not — nor seeks to be — necessarily the final word on the subject. As with the entire complaints process, the complainant is aware of, and able to comment on, how the matter has been handled.
16. The Commission has also created the position of Charter Officer to monitor the complaints service in the context of its Complainants Charter, which makes explicit the standards by which complaints should be investigated (see Section A5). This offers yet another layer of accountability within the system and guarantees that all opinions about PCC performance will be heard and noted.
17. Outside its primary role of investigating specific complaints, the Commission also provides informal advice and assistance for all those that require it. In 2002, over seven thousand enquiries from members of the public — by telephone, fax and email — were answered. The Commission is more accessible than ever and offers a variety of services that place it within the direct contact of ordinary people.

#### Dealing with emergencies

18. One important example of our accessibility is the way in which the Commission is able to respond directly to emergencies, as sometimes — often in the most serious cases — there are occasions in which people may require urgent advice outside office hours. To accommodate this, the Commission provides on its answerphone a pager number, which will be answered at any time of the day or night. This service is particularly designed to help people who may feel harassed by the press and require immediate help to alleviate the problem. By telephoning the PCC, they can be put through to a message service that will place them immediately in contact with a designated Complaints Officer. In this way, the public can be reassured that help will always be at hand from the PCC<sup>13</sup>.

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<sup>13</sup> See also Section A4, paras 11-17.

**A (4) Complaints handling: speed and effectiveness in resolving complaints**

1. As set out in Section A1, the benefits to the complainant of quick investigations, providing flexible and proportionate resolutions to their complaints, are considerable. To that end, the Commission undertakes constant internal monitoring of all complaints to ensure that the service that is provided to the complainant is up to the high standards set out in the *Complainants Charter* (see Section A5). Chief among the Commission's responsibilities is a commitment to deal with complaints as quickly as possible, because it recognises that the swifter the resolution the more effective it is. In addition, since the beginning of 2002 all complainants who receive a decision by the Commission are surveyed after the conclusion of their complaint for their views about how they felt the complaint was handled (see Section A 5, p. 47).

**Swift handling of all complaints**

2. Some years ago the PCC reformed its internal procedures to make its handling of complaints more effective. It pledged to reduce the average number of working days taken to deal with complaints to 40. In the past two years, this figure has been cut to just 32 working days, making the PCC by far the quickest media complaints body<sup>14</sup>. Not only is the PCC the swiftest<sup>15</sup> but it is also the smallest and most efficient, with just 12 full time members of staff.
3. The PCC has underlined its commitment to swift redress by upholding complaints on the basis that offers to resolve them have not been made quickly enough<sup>16</sup>.

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<sup>14</sup> For comparisons with other regulators, where this is possible, see p.37.

<sup>15</sup> Something of great importance to members of the public — see p. 137

<sup>16</sup> For example *de Silva/Wijeyesinghe v Sunday Times, Report 56*. The Commission considered that the time taken to correct acknowledged inaccuracies was too long and found that while the record had been set straight, the Commission did not believe this had been carried out with the speed required under the Code and therefore found a breach of Clause 1 .

4. With so much emphasis on resolving complaints to the satisfaction of the complainant, handling times for resolving complaints inevitably take a little longer: often, a resolution can come only after an investigation has established a breach of the Code. After that, negotiations aimed at reaching a settlement can obviously take some time depending on the nature and complexity of the case. Nevertheless, the average time taken to deal with all resolved complaints is 62 working days — just two months. This includes a number of very complicated and technical complaints that do take some months to unravel. Just under two thirds of cases involving breaches of the Code (63%) are investigated and resolved in under two months. Compared with legal proceedings or statutory complaints mechanisms, these figures are impressive, and there is evidence too that complainants are satisfied with the length of time taken to handle their complaints (see paragraph b, below).
5. The Broadcasting Standards Commission, commendably, is the only other media regulator which publishes its complaints handling times. Because of its split remit there are different times for complaints about fairness and those about standards. The complaints into fairness are the most directly equivalent to the sort of issue that the PCC investigates, and it is notable that the BSC last year took an average of 25 weeks to adjudicate such complaints and 19 weeks to investigate those complaints that were not adjudicated. The full table is reproduced in the Appendix IV.
6. Regrettably, it seems that neither the ITC nor the Radio Authority, although statutory bodies, publish such information.

Delays that arise from complaints through lawyers

7. Complainants do not need to use a representative to complain about a breach of the Code. Indeed, to do so can be counterproductive. Lawyers or representatives make no difference as to whether or not a complaint is resolved — because a resolution is based on whether or not the Code has been breached and not on the manner in which the complaint is presented. They also charge money for a service that would otherwise be free. But more importantly, they can dilute the effectiveness of the PCC by delaying the time that it takes for their

clients — ordinary members of the public in most cases — to obtain redress.

8. In complaints that raised a breach of the Code and were satisfactorily resolved, complainants who used a lawyer or other representative had to wait **40%** longer than those who complained on their own behalf. Such complaints took an average of 84 working days. The PCC has always maintained that any complaints system that was not based on conciliation would only succeed in delaying justice for complainants, because such a system would inevitably involve more lawyers: here is some proof for that assertion.

#### Satisfaction with resolved complaints

9. The PCC believes that the system of conciliation delivers effective and efficient redress for members of the public — and those people whose complaints are resolved seem to agree. According to our survey of all complainants whose complaint was resolved, 92% thought that their complaint had, overall, been handled satisfactorily or very satisfactorily. Moreover, 99% thought that the PCC's staff were helpful or very helpful, whereas 90% considered their complaint to have been handled thoroughly or very thoroughly. (See Section A5 and Appendix V).
10. There was also satisfaction about the amount of time that the Commission took to resolve complaints: 87% thought that it was about right, and just 9% thought it was too slow. 2% thought it was too quick.

#### Handling emergencies: resolving problems quickly at times of crisis

11. When major tragedies happen that affect a large number of people and attract national and international media attention, the sheer number of journalists can overwhelm the grieving or the ill. Individual journalists in these circumstances may not be harassing people but repeated requests from different journalists for information can have the same effect as far as those who are approached are concerned.
12. In these circumstances, the Commission has taken steps to minimise the distress caused to people who are caught up in terrible events. In

recent years, the Commission has therefore issued private guidance to editors — before receiving any complaints — about the behaviour of journalists making enquiries into the tragedies at Dunblane, Omagh and the Paddington rail disaster.

13. For instance, shortly after the Dunblane shootings the then Chairman of the PCC circulated a letter to all national newspaper editors and to the Press Association, which transmitted the information to the rest of the media. The letter underlined the numerous different Clauses that journalists must obey at such times, relating to privacy, harassment, and children, but in particular relating to intruding into grief and shock. A few days later the Chairman issued a general press release making clear that media organisations should, following the Queen's visit, reduce the scale of their presence in the town to allow the residents space to grieve and bury their children.
14. Similar reminders about best practice at such difficult times were circulated after Paddington and Omagh. In each case we liaised with the relevant authorities, including, in the latter case, the Secretary of State for Northern Ireland. In the case of the Paddington rail disaster, the PCC initiated a special helpline that referred grieving relatives, or those affected, straight to a senior member of staff for specific advice. In the event of any future emergency, those affected will be able to use the PCC's 24-hour emergency advice service, which is staffed by an experienced complaints officer.
15. Following the terrorist attack on the twin towers on September 11 2001, representatives of British families whose relatives were missing contacted the Commission. Many of the families welcomed the opportunity to speak to the media and pay tribute to their relatives as part of the grieving process. But one or two, understandably, did not want any media attention at all. The Commission swiftly informed editors of the identity of these families, and editors respected their privacy and withdrew their reporters. The PCC effectively acted as a conduit through which messages to reporters to desist from approaching relatives were conveyed. Formal complaints were not necessary and not made, because swift and effective action was taken to address the problem of cumulative approaches.

16. There are, sadly, from time to time national crises on such a scale that warrant a pro-active stance from the Commission. Its role at these times is to issue practical and common-sense advice to editors in order to minimise the distress caused by the inevitable presence of reporters at the scenes of such tragedies.
17. The PCC also has a representative on the Home Office Media Emergency Forum which brings together those agencies that might be affected by a national emergency or major incident to plan how responses might be co-ordinated.
18. It is notable that, following widespread adherence to the PCC's advice, none of the families directly involved in the disasters outlined here has ever needed to make a formal complaint.

### Conclusion

18. Fast, free and fair, the PCC's recipe for obtaining practical and proportional resolutions to complaints is appreciated by complainants — as set out in paragraphs 8 and 9 — and has been absorbed by editors who increasingly apply the principles developed by the PCC when dealing directly with their readers who have complained. Its flexibility delivers resolutions tailored to the particular circumstances of a complaint, and anticipating public needs at times of tragedy has protected the most vulnerable members of the public from overzealous or indiscreet enquiries.



## A (5) The Complainants Charter and customer satisfaction

1. A fast and effective service is at the core of the Commission's work. To ensure that we deliver that service, to provide us with benchmarks against which we can improve it, and to be able to report back to the public in an accountable manner on how we handle complaints, we established a *Complainants Charter* in 1996.

### The terms of the Charter and its development

2. The commitments in the Charter cover five key areas:
  - responding swiftly to enquiries — both on the telephone and in writing;
  - dealing with the complaint as quickly as possible;
  - processing the complaint without cost;
  - being as accessible as possible to anyone who needs to complain; and
  - being as open as possible in our procedures.

This Charter — a full copy of which is in Appendix VI - also commits the PCC to publishing statistics about the implementation of these service targets each year in its Annual Review.

3. As soon as we have finished dealing with a complaint, all complainants whose complaint has resulted in a formal decision from the PCC are informed that they are able to complain to an internal Charter Officer if they believe we have not lived up to the standards contained in it. The Charter Officer's job is then to investigate the manner in which the complaint was processed and make recommendations for change accordingly. In 2002, the Charter Officer only received 6 complaints — which the Commission believes is an encouraging sign that, although there is of course always scope for improvement, we are living up as best as possible to the spirit and letter of the Charter.

4. As set out above, the original Charter was launched in 1996. It was updated in March 2001, when a number of the service targets were significantly strengthened. These included:
  - the setting for the first time of a target complaints handling time — 40 working days;
  - a reduction of the time in which original letters of complaint are acknowledged from five days to three days; and
  - an increase in the range of languages other than English in which our literature is available — which now also includes Arabic, Chinese, Somali and Gaelic.
5. The Commission will continue to monitor these targets and to toughen them when it is appropriate to do so.

#### How we measure up

6. Set out here are the Charter results for 2002, which show how we measured up to our five targets. Further detail on much of this information is also available in Sections A2 and 3, and Section D.

#### **A. Responding to enquiries**

The PCC receives a huge number of enquiries every year from members of the public about a whole range of issues. Some of them want more information about our service; some need advice about dealing with a newspaper; others want details about our work for their studies.

Last year we received 7,250 such requests. Some 28% were received on our dedicated Helplines — including our Textphone. Just over 24% were made via e-mail and through our website. The remainder — just under half — were to the PCC's main switchboard (the number of which is listed in all main phone books).

Our Charter aim is to answer all telephone calls within four rings — and we achieved that target in 90% of cases. All e-mails were

immediately acknowledged — although some specific requests for detailed information inevitably took longer to deal with.

## **B. Dealing quickly with complaints**

While advice on the telephone and via e-mail is a large proportion of our work, the main burden of it is of course to process formal complaints. In 2002, all complaints — whether made in writing or submitted by e-mail — were acknowledged within three working days of receipt. Throughout the complaints process, complainants were informed of the progress of the complaint at intervals of every fifteen working days.

Our Charter aim is to deal with all complaints in an average of just forty working days, far quicker than any other similar regulatory body (see Section A4). In 2002, the average time it took to deal with complaints was 32 working days, exactly the same as last year's record.

85% of all complaints were completed within that target period — compared to a record proportion of 87% in 2001.

## **C. Providing a service without cost**

For the vast majority of ordinary people, legal actions — whether against newspapers as indeed against any other organisation — are prohibitively costly. One of the keys to a successful system of regulation with concern about ordinary people at its heart is therefore that it should be free<sup>17</sup>.

As a result of the funding provided by the newspaper and magazine industry, the PCC continues to deal with complaints at no cost either to complainants or taxpayers.

Some individuals, of course, seek to make complaints through lawyers, as they are fully entitled to do. Such representation, however, with the costs it entails is not essential. Indeed, if anything, complaints made through lawyers tend to take longer to deal with than complaints

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<sup>17</sup> A view confirmed in a recent MORI survey — see p. 137

made directly by the individuals concerned. In 2002, while the average time to deal with all complaints was 32 working days, complaints made through lawyers took an average of 71 working days - 122% longer<sup>18</sup>.

#### **D. Being as accessible as possible**

Our Charter aim is to ensure our service is easy to use, and well known to those who might need it — in particular the most vulnerable in society for whom complaining might well be an ordeal.

As set out above, help on the phone or via e-mail is easily available — including in cases where individuals may be subject to harassment (see Section A3, para. 16). All callers are told about the Code and, where appropriate, are sent a copy along with a leaflet on *How to Complain*. (The text of the Code is also on the PCC website, and is available directly from most newspaper offices.)

Other information about how we seek to be accessible — including the website and assistance for those in particularly vulnerable positions — is set out in Section A 3.

#### **E. Being as open as possible**

Transparency is an important part of accountability — and we continue to ensure that our procedures and decisions are as open and clear as possible.

The complaints procedure itself is open and straightforward. All correspondence takes place in writing, and both sides to a dispute have the chance to comment on the evidence of the other party.

Decisions of the Commission are published regularly — both via email to editors and all those who have expressed an interest in the work of the PCC (over 800 people currently subscribe to the PCC's news service) and in the form of regular quarterly bulletins which are mailed out to editors, MPs, libraries and other organisations.

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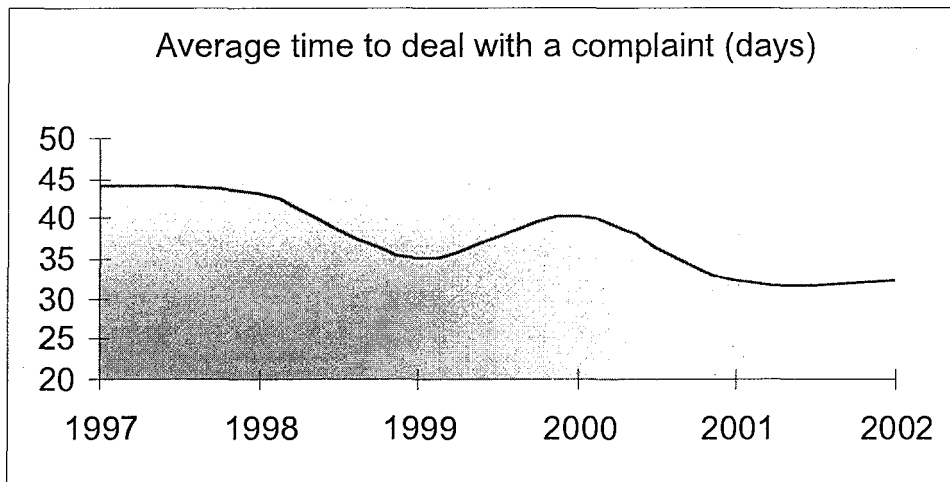
<sup>18</sup> For details on time delays involved in the resolution of complaints, see p. 37

Where a complainant feels that we have not lived up to any of the commitments in the Charter, they can complain to a Charter Officer (see para. 3 above).

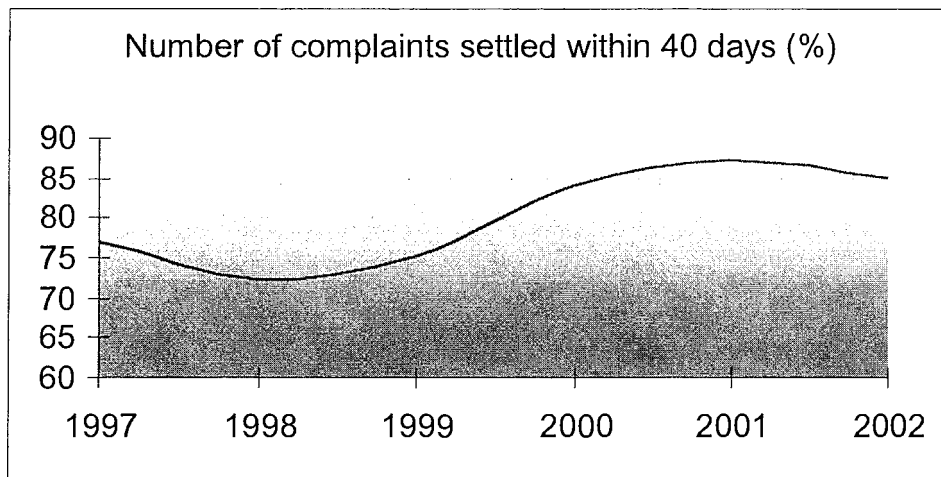
Improving standards year on year

7. Part of the aim of the Charter is to ensure that we continue to seek higher standards, where these are possible. Our Charter results from previous years are set out in our Annual Reviews — starting with the Review of 1997. They show in particular that:

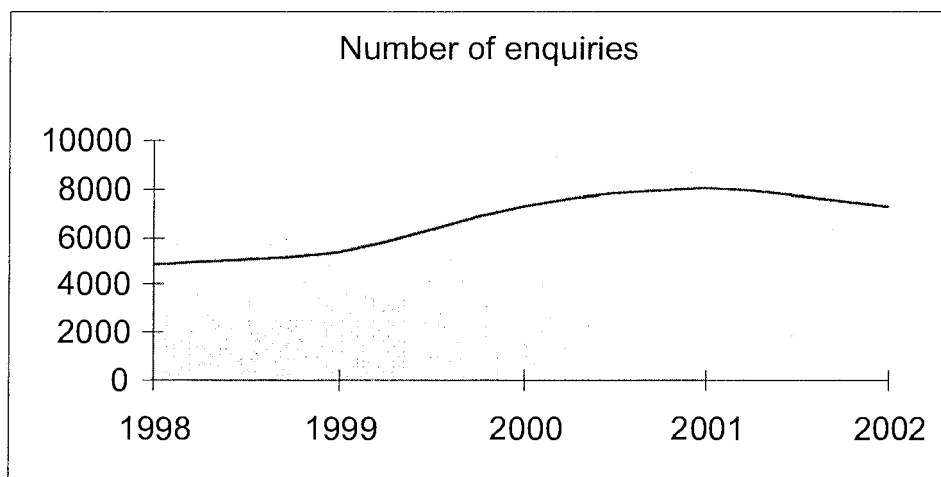
- the average time taken to deal with a complaint has fallen from 44 working days in 1997 to 32 working days in 2002 (an improvement of 27%), as this Table shows:



- the number of complaints settled within forty working days has increased from 77% in 1997 to 85% in 2002 (having touched 87% in 2001), as the Table on the next page shows:



- the PCC dealt with an increasing number of enquiries — up from 4,800 in 1998 (the first year detailed records were kept) to 7,250 in 2002 (again having touched 8,000 in 2001), as the final Table illustrates:



- As set out above, the Commission continues to monitor these targets and results under them. Each year's results are, where appropriate, taken as a benchmark for the future and, if possible, action identified to improve on them.

Measuring our success

9. The PCC decided in 2001 that it would be useful to have an external measure of our standards of service, and conducted a pilot customer survey to assess what complainants thought about our service to them. That pilot was a success and a full customer survey was established from 1<sup>st</sup> January 2002.
10. The survey covers complainants views about:
  - clarity of our written information;
  - helpfulness of our staff;
  - thoroughness of investigation;
  - speed with which the complaint was dealt with; and
  - overall satisfaction with the handling of the complaint.
11. A survey form — which can be returned anonymously to us — was sent to all those whose complaints we had adjudicated, those which were resolved, those where there was no breach of the Code, and those where the Commission judged the editor's offer of remedial action sufficient enough under the Code to take no further action. The Commission received 347 responses, which was a representative cross-section of different types of complainant.
12. The survey — the full results of which, broken down by type of complainant, are set out in Appendix V — showed that:
  - 94% found the PCC's printed information either very clear or clear — while only 4% found it unclear;
  - 85% found the PCC's staff either very helpful or helpful ;
  - 61% thought their complaint was dealt with either very thoroughly or thoroughly ;
  - 73% believed the time it took to deal with their complaint was about right — while only 10% thought it was too slow; and
  - 59% said that their complaint had been handled either very satisfactorily or satisfactorily .

13. The Commission notes the results of this first ever survey, which has now become a regular part of the complaints process. The results from 2002 will also become a benchmark for the future. The results are especially interesting when it is remembered that 68% of those who returned a survey form were individuals where it was decided either that their complaints raised no breach of the Code, or that no further action was necessary after an offer of remedial action by the publication concerned following the intervention of the PCC. The results of the survey among those whose complaints had been successfully resolved were even higher — at 98%, 99%, 90%, 87% and 92% respectively for each of the above indicators.

#### Comparison with other regulators

14. The benefit of self-regulation is that it is flexible and quick. Statutory regulation hampers the job of dispute resolution, and imports delays into the system. A comparison of the PCC's complaints handling time with other regulators is instructive. See page 37 for details.

#### Conclusion

15. The Commission is satisfied that the Complainants' Charter continues to deliver a quick and accessible service. It will keep its targets under review and strengthen them when appropriate. And it will use the results of its first Customer Satisfaction survey as a benchmark for future surveys and improvements.



**SECTION B**

**THE CODE**



B (1) The Code and its importance

1. The editors Code of Practice is the iron frame of the newspaper and magazine industry's moral architecture. In setting out the responsibilities incumbent on editors, it simultaneously sets out a comprehensive set of rights for the public who have a clear understanding of what they should expect from the press. As such it is an invaluable tool for those who have regular dealings with the media, as well as those who have cause for complaint. At the same time, it provides the Commission with a framework in which to adjudicate on complaints in a fair and consistent fashion. The Code, in short, is the centrepiece of self-regulation.
2. The Code covers many issues, but it has at its heart always covered four key areas:
  - accuracy, comment and fact, opportunity to reply, and swift corrections;
  - privacy — including the use of pictures of people taken in private places;
  - rules on the manner in which news is gathered — listening devices, subterfuge, harassment, payments to criminals and witnesses, and financial journalism; and
  - special protection for particularly vulnerable groups of people — children, those in hospital, people suffering from grief and shock, innocent relatives of those convicted of crimes, victims of sexual assault and people who might be victims of discrimination.
3. While much of the coverage of the PCC and of self-regulation has revolved around accuracy and privacy, the importance in particular of the rules on the vulnerable should be underlined. This has always been, in many ways, where the Code has been at its strongest — and where, as Section B3 sets out — it can objectively be shown that standards have most clearly been raised.
4. The editors Code Committee will doubtless make its own submission to the Select Committee. This Section sets out how the Code has

developed, demonstrates how it has raised standards of reporting and a number of other issues.

### Background to the establishment of the Code

5. Perhaps the most important point about the Code is that it exists at all. From the time when the last licensing laws on newspapers were abolished in 1695, up until 1991, the press rejected all moves to adopt a universal set of ethical standards. In recent times, for instance, the 1977 Royal Commission on the Press called for the old Press Council to adopt a Code which would produce clarity and consistency in its decisions. The Council and the press rejected the idea out of hand at that time<sup>19</sup>.
6. It was the Calcutt Committee which returned to the idea in 1990 and insisted that the PCC should administer a Code binding all publications — a point the industry and the PCC's first Chairman, who insisted that editors themselves should write it, accepted<sup>20</sup>. The history of the formulation of the Code is well chronicled and does not need repetition here. What does need underlining, however, is the extraordinary change that it required of all publications. Up until this point, they had never had a universal set of rules to guide them. From the start of 1991, all editors agreed to abide by a Code covering a substantial number of ethical areas — as well as to the jurisdiction of a body, which would soon have a majority of lay people on it, to make judgements on it.
7. As such the importance of the Code's establishment — alongside an acknowledgement of the fact that it would inevitably take time to change the culture of news rooms which for three centuries had been free from any ethical rule book — cannot be overstated.
8. It should also be underlined that the Code applies equally to all publications — national newspapers, regional and local newspapers and magazines. That a standard set of rules to which *all* publications can subscribe should be established is also of great significance.

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<sup>19</sup> Professor Richard Shannon, *A Press Free and Responsible* (2001), p.16

<sup>20</sup> Indeed, the Newspaper Publishers Association had committed the national press to a short Code in November 1989.

The Code twelve years on

9. Against that background, it should be of little surprise that the early years of the PCC, and the application of the Code in its initial stages of development, were difficult ones. The culture change required by this system of self-regulation cannot be overstated.
10. Nor, indeed, should the scale of that culture change in the decade since then. Whatever failings a free press might have, there is little doubt that the Code — as we examine later — has raised standards, and has imbued among editors a degree of accountability to readers and complainants which simply never existed before. Furthermore, an entire generation of journalists — among them many who are now senior editors — has grown up with the reality of the Code: rather than learning it anew, it has always been part of their training. The extent of this culture change stems from the fact that the rules — put another way, the self-censorship — is self-imposed. Editors live up to the standards because they establish them. That simply would not happen in any system of legal regulation. Newspapers fight legal muzzles.
11. It is important to emphasise, too, that editors consistently deal with complaints by reference to the Code itself. The PCC has never had an instance of where an editor sought to defend him or herself by reference to anything other than the Code of Practice. This is also a demonstration of the culture change that has taken place across the industry.
12. A number of key developments have underlined the authority of the Code still further :
  - it is now an important part of the contract between most publishers and their editors — giving the PCC a powerful ultimate sanction (see Sections B4 and E3) — and in the contracts of many journalists too;
  - it is a cornerstone of journalist training, and knowledge of it is a part of the NCTJ exams that trainees undergo (see Section D4);
  - compliance with it is written into important pieces of legislation that affect both the rights of the public and the responsibilities of the press (see Section B5); and

- the Code's terms — and the Commission's interpretation of them — have formed a key part in judgements by the Court of Appeal and others under the Human Rights Act.
13. Furthermore, the Code is of growing importance in a new area which presents challenges for all regulators — that of on-line publications. Following consultation between the Commission and the industry in 1997, it was agreed that the Commission's jurisdiction, and that of the Code, would apply to all on-line versions of newspapers and magazines which were already subject to the terms of the Code.
  14. This important development underlines the commitment of editors to high standards in their on-line publications — and of the PCC to policing a difficult area that certainly does not lend itself to any form of legal control. It also cuts off the possibility that some newspapers might use their own websites to publish material which they could not publish in their off-line versions because it breached the Code. The Code is therefore already playing an important part in establishing a culture of ethics and responsibility on the Internet — an area where it is recognised that statutory controls would be useless.

#### The Code and accountability

15. Section E6 deals with the way in which the Commission, and self-regulation, are accountable to the public, as well as the scrutiny to which the system is rightly subjected. But it should be underlined here that the Code also is one of the crucial ways in which the industry holds itself accountable.
16. First of all it provides — as set out above — an objective set of standards which the public can expect newspapers to meet. But it also allows the public an opportunity to help frame the rules to which editors subject themselves. The Code Committee will consider representations from any member of the public, or any organisation, about possible changes and consider them carefully. That interaction between press, PCC and public is an important part of making self-regulation — which in the circumstance might perhaps be described as civil regulation — work effectively.

### The Code and the Commission

17. While the Code rightly belongs to the industry, it is the independent PCC which ratifies it. The fact that a body with a lay majority must consider changes to the Code and agree them, buttresses the public input into the Code's provisions.
18. It is also, of course, the job of the Commission to administer the Code and reach judgements under it. In doing so, the PCC will always consider not just the letter of the Code, but its spirit as well. In this way, the Commission has been able to build up a body of case law — particularly, as Section C3 outlines, in the area of privacy. The Commission expects editors to keep up to date with this development and to take note of important judgements.

### Conclusion

19. The rest of this Section looks at the Code in action and the way in which it has developed to the benefit of the public. But it is worth summarising here that the Code is now deeply embedded throughout the newspaper industry, in legislation, in EU law and crucially in judgements handed down by the Courts. The Code may not be perfect in the eyes of some — but it is here to stay.

B (2) Strengthening the Code: its development over 12 years

1. The Code of Practice is a flexible and easily adaptable document. It evolves and responds to changes in circumstances, events and perceptions amongst the public, the industry and parliament. In practice, this means that, during the twelve years since its establishment, the Code has been tightened considerably on a number of occasions. These are set out briefly here.
2. The original sixteen Clause Code of Practice came into effect on 1<sup>st</sup> January 1991<sup>21</sup>. The first significant change to the Code did not occur until March 1993, following the voicing of concern about the manner in which some material was being obtained by journalists. A case of particular note involved information, which had been obtained using illegal phone-bugging, published about a prominent politician in a Sunday newspaper. Further attention was brought to bear on the issue by the Camillagate scandal of late 1992. It was the first opportunity to demonstrate that the Code could be amended to respond to a pressing issue and, consequently, a new Clause, which became Clause 5 (Listening devices), was added as follows:

*Unless justified by public interest, journalists should not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.*

The last breach of this Clause of the Code occurred in early 1996 — a point which underlines the practical effect of amendments to the Code and the way in which newspaper standards are raised.

3. Further changes were discussed in the ensuing months with the explicit intention of strengthening provisions on privacy. In October 1993, responding to comments contained in Sir David Calcutt's second Review of Press Self-regulation, a clear definition of private property was included at the foot of Clause 4 (Privacy):

*Private property is defined as any private residence, together with its garden and outbuildings, but excluding any adjacent fields or*

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<sup>21</sup> The process behind the inception of the Code is ably described and summarised in Professor Richard Shannon's *A Press Free and Responsible* (2001); see especially Chapter 1.



*parkland. In addition, hotel bedrooms (but not other areas in a hotel) and those parts of a hospital or nursing home where patients are treated or accommodated.*

4. Clause 8 (Harassment) was also amended to refer to the above definition of private property in regard to the taking of long lens photographs.
5. In April 1994, Clause 6 (Hospitals) was slightly amended to clarify to whom journalists should identify themselves when making enquiries at hospitals. This was changed from a responsible official to a responsible executive .
6. Following the landmark ruling in the Spencer case of April 1995, in which an editor was heavily censured for intrusion into the private life and health of Countess Spencer, the definition of a private place was further clarified<sup>22</sup>. In May 1995, the definition of private property included in Clauses 4 (Privacy) and 8 (Harassment) was amended to make clear that privately-owned land which could easily be seen by passers-by would not be considered a private place. It now read:

*Note: Private property is defined as (i) any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland and the surrounding parts of the property within the unaided view of passers-by, (ii) hotel bedrooms (but not other areas in a hotel) and (iii) those parts of a hospital or nursing home where patients are treated or accommodated.*

7. The Code continued — and continues - to be reviewed to ensure that it was successfully meeting stringent requirements in key areas. One such area was the protection of children, especially in sex cases, and in September 1995 Section (ii) of Clause 13 (Children in sex cases) was amended. Where it had previously stated that the term incest where applicable should not be used", it now said: the word incest should not be used where a child victim might be identified .
8. It also became clear that there was a very real danger that a discrepancy between the various guidelines for different media could

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See p. 180

allow different levels of information to be made available which, in combination, might identify vulnerable children. In September 1995, after consultation with the Code Committee, the Codes of the Broadcasting Standards Commission and Independent Television Commission were similarly amended in order to ensure that the jigsaw identification of such vulnerable children did not occur accidentally across the whole media. As a sign of success in this area, no substantive complaint about such identification has been received since, and no complaint under any part of the Clause (which became Clause 7) itself upheld since April 1997<sup>23</sup>.

9. In 1996, another area of the Code was placed under the spotlight, relating to the twin questions of payments to criminals and to witnesses in criminal trials. The trial of Rosemary West, during which a number of witnesses sold stories to newspapers, proved a catalyst for a reconsideration of the position of the Code in regard to payments for stories. Indeed, although the Court of Appeal in the West trial was satisfied that no harm had accrued from payment by newspapers, it was seen as a useful opportunity to tighten the Code in this area. A complaint about the serialisation of a book by rogue trader Nick Leeson also ensured that the question of payment specifically to criminals was considered<sup>24</sup>.
10. The revised Code contained a two-pronged Clause, dealing separately with payments to witnesses and criminals. On the former point, perhaps its most important amendment was to enshrine the ideal of transparency in all dealings between newspapers and witnesses. In this way, the Commission was able to prohibit, as far as possible (and more effectively than could be achieved through legislation), any mischievous influence of the press on the judicial process. The revised Clause now read:
  - i) *Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done.*

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<sup>23</sup> *A woman v Daily Record, Report 38*

<sup>24</sup> *Gordon v Daily Mail, Report 33*

*Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give.*

*(An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence should be disclosed to the prosecution and the defence and the witness should be advised of this).*

- ii) *Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates — who may include family, friends and colleagues — except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.*
11. In September 1997, Diana, Princess of Wales, died. This event unleashed many vociferous calls for the Code to be reviewed. It was certainly clear to the industry itself that the Code, particularly as it related to privacy and harassment, could be tightened further. The result of such consensus was the most substantial rewriting of the Code to date — leading to perhaps the toughest set of press regulations anywhere in Europe. The revised Code was implemented from January 1998 with the significant changes set out below.
- Clause 1 (Accuracy) was extended to deal with the manipulation of photographs.
  - The new wording for the privacy Clause (which became Clause 3) was for the first time drawn largely from the European Convention on Human Rights, which the Government had by this time pledged to incorporate into British law. This gave particular regard to a person's private and family life, home, health and correspondence. It also significantly altered the definition of a private place, which now included both public and private places where there is a reasonable expectation of privacy. There had been concern that the previous Code had been too narrow in its definitions and would not have protected someone from intrusion who was, for example, in a church or at a discreet table in a restaurant. The revised Clause now reads:

- i) *Everyone is entitled to respect for his or her private and family life, home health and correspondence. A publication will be expected to justify intrusions into any individual s private life without consent.*
- ii) *The use of long-lens photography to take pictures of people in private places without their consent is unacceptable.*

*Note: private places are public or private property where there is a reasonable expectation of privacy.*

- One of the chief concerns at the time of Princess Diana s death was about the role of the paparazzi and the manner in which some photographs were taken. To address this concern, the provisions on harassment (which became Clause 4) were revised to include a ban on information or pictures obtained through persistent pursuit . The new Clause 4 also made explicit an editor s responsibility not to publish material that had been obtained in breach of this Clause regardless of whether the material had been obtained by the newspaper s staff or by freelancers.
- One of the strictest Clauses in the Code, relating to the protection of children s privacy, was significantly amended. The new Clause (6 in the revised Code) extended the protection of the Code to all children while they were at school. (Previously it had referred only to the under 16s). It also added two new elements: a ban on payments to minors, or to the parents or guardians of children, for information involving the welfare of the child (unless demonstrably in the child s interest); and a requirement that there had to be a justification for the publication of information about the private life of a child other than the fame, notoriety or position of his or her parents or guardian. Clause 6 now reads:
  - i) *Young people should be free to complete their time at school without unnecessary intrusion.*
  - ii) *Journalists must not interview or photograph children under the age of 16 on subjects involving the welfare of the child or of any other child, in the absence of or without the consent of a parent or other adult who is responsible for the children.*

- iii) *Pupils must not be approached or photographed while at school without the permission of the school authorities.*
- iv) *There must be no payment to minors for material involving the welfare of children nor payment to parents or guardians for material about their children or wards unless it is demonstrably in the child's interest.*
- v) *Where material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his or her parents or guardian*
- The Clause on intrusion into grief and shock (now Clause 5) had previously related only to enquiries made by journalists at such times. Members of the Commission expressed concern that the provisions of this Clause would not explicitly prohibit the insensitive publication of material in times of grief or shock. The Code Committee took the opportunity to extend its remit to include publication and thereby enshrine in the Code a provision explicitly — and successfully — to protect a group of people particularly vulnerable to press intrusion during difficult times. The following sentence was therefore added:

*Publication must be handled sensitively at such times, but this should not be interpreted as restricting the right to report judicial proceedings.*

- Throughout the entire Code the phrase *should not* was replaced by *must not*. In addition, the section on the public interest was separated from the numbered Clauses. It included a key addition: that in cases involving children the editor must demonstrate an exceptional public interest to over-ride the normally paramount interests of the child.
12. 1998 became a year in which the newly-revised Code played a major role in ratcheting up newspaper standards, particularly in regard to matters of privacy. The Code, as it now stood, placed stringent requirements on newspapers to limit unjustified intrusion into people's lives and the Commission upheld the highest ever number of privacy complaints. This number has decreased since as the effect of the toughened regulation in this area has been felt (see Section B3).

13. The final development in the Code up until now — although, following dialogue with the Lord Chancellor's Department, further modification on the Clause relating to payment to witnesses is likely to occur in the near future — again underlined its two main strengths: its primary role to protect vulnerable members of society; and its ability to respond to changing circumstances.

14. In December 1999, following discussions with the Government about the implementation of a new Youth Justice Act, Clause 10 was amended to give further protection to children involved in criminal cases. It contained the following addition:

*Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of crime. This should not be interpreted as restricting the right to report judicial proceedings.*

15. At the same time, the public interest defence was expanded to take account of the Human Rights Act. A public interest exemption was also added to Clause 10 following a complaint from a man who was named in an article that referred to his son being given a police caution. The newspaper defended itself by demonstrating that the connection between the two men had been acknowledged by the son in a television interview. The relationship was, therefore, substantially in the public domain — but that was not, however, a legitimate defence at the time. The Commission ruled that, although a technical breach of the Code had occurred, the newspaper should not be censured for naming the father<sup>25</sup>. It further asked for the Code to be clarified in this area. The resultant change enshrined the commonsense view that newspapers should not be prevented from publishing material that was otherwise available to the public. It read:

*There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public.*

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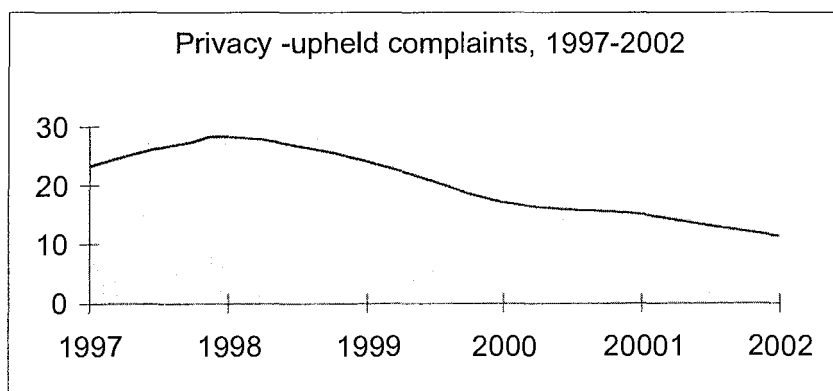
<sup>25</sup> *Ryder v News of the World, Report 45*

**B (3): How the Code has changed newspaper behaviour in key areas**

1. It is impossible to prove how successful the Code has been, because —regrettably from an evidential point of view — the true nature of its success lies in the stories that have remained hidden from the public eye, in the pictures that have never been published, in the witnesses and criminals who haven t been paid, in the children who haven t been approached at school — and so on.
  
2. But there are some ways in which we can demonstrate how the Code has worked, and how effective the PCC has been. One way to do this is to demonstrate how low the rate of recidivism among editors has been over the years. The Commission uses its adjudications — which it publicises widely — to educate editors about the manner in which they should interpret the Code, as well as to set out to the public what they can expect from it. In an impressive number of key areas the Commission has been successful in raising standards, ensuring that certain sorts of journalistic behaviour are effectively outlawed and protecting members of the public accordingly.

Privacy — breaches of the Code rarer

3. As set out in Section B2, there was a wholesale revision of the privacy Clause in 1998 which has led to a substantial change in attitudes towards privacy amongst editors. That year — partly to underline the seriousness with which it viewed the issue of intrusion — the Commission upheld a substantial number of complaints. Since then, fewer complaints have been upheld as the tightened wording has taken effect — a sure sign that standards are now much higher in this area. The Table below underlines the point.



Privacy and children

4. It is generally accepted that one of the greatest successes of the Commission has been in its protection of children. Through a combination of adjudications and changes to the Code, the manner in which journalists and photographers approach and write about children has changed dramatically over the past decade. Journalists no longer approach children for interviews or photograph them without their parents consent, offer them money for information about the welfare of other children, approach them at school, or write stories about them simply because of the position or fame of their parents. The Code now stipulates that all children should be free to complete their time at school without unnecessary intrusion, giving them broad rights to freedom from intrusion. The Commission has upheld a number of complaints relating to the welfare of children — detailed in Section C2 — but it is important to pinpoint here what is regarded as the watershed in the PCC's protection of children.
5. Early in 1995 a member of the public from Accrington complained that her 15-year-old son had been approached by a reporter while he was at school. The reporter wanted to speak about a controversy that had taken place on an adventure weekend and obtain details that clearly involved the welfare of other pupils. The Commission upheld the complaint<sup>26</sup>.
6. The significance in this complaint was that it reached a national audience — and particularly came to the attention of editors — because it coincided with the arrival at Eton of Prince William. In outlining how the press should continue to behave when the Prince went to Eton, the then chairman of the PCC, Lord Wakeham, was able to illustrate the strong protection afforded by the Code by pointing to this complaint. In linking the case to a high-profile event the PCC succeeded in educating editors about the standards to which they were expected to conform, particularly in relation to ordinary people.
7. Standards in newspaper behaviour towards children were therefore already rising by the time the Code of Practice was revised following the death of Diana, Princess of Wales. Thanks to the adjudication in

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<sup>26</sup> *Livesey v Accrington Observer & Times, Report 30*



the case of the Accrington school boy, editors were being educated about the grave importance that the Commission attaches to protecting the privacy of all children, even before the Code was tightened considerably in 1998 (as outlined in the previous Section)<sup>27</sup>.

### Privacy and health

8. In a serious case brought by Earl Spencer in 1995, the Commission deprecated the publication of a story and pictures concerning Countess Spencer's treatment in a clinic. There was no public interest for the article or the pictures and the discussion of the Countess's health problems clearly intruded into her privacy. The Commission used its power to refer the terms of the adjudication to the newspaper's publisher, who publicly accepted the adjudication and criticised his editor<sup>28</sup>.
9. In the intervening eight years the Commission has not received any similar complaints. The grounds of clinics are now properly regarded as private places by editors, and there have only been a handful of cases where an intrusion into someone's privacy on a health matter has been brought to the Commission's attention (see Section C2). Even in these few cases editors had some reason to publish the material, but the Commission concluded that the wrong decision had been made and has upheld half a dozen complaints accordingly.
10. There have, however, been no cases since the Spencer case where a newspaper has revealed details of a person's illness without at least some justification and used pictures to illustrate it.

### Privacy and private places

11. Not since 1991 has an editor sought to defend a breach of the Code by saying that the pictures complained about were inoffensive. On that occasion a newspaper published photographs of Princess Eugenie playing naked in her back garden. The Commission found a serious breach of the Code and dismissed the editor's defence as an irrelevance<sup>29</sup>. Obviously this case involved a high-profile

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<sup>27</sup> See also Section C6.

<sup>28</sup> *Spencer v News of the World, Report 29*

<sup>29</sup> *Buckingham Palace Press Office v The People, Report 2*

complainant, but since then countless others have been protected because of the Commission's refusal to accept the suggestion that photographs that are charming cannot breach the Code. Furthermore, no newspaper has since shown such disrespect to a child by photographing them naked and publishing the photographs.

12. Similarly, editors no longer justify intrusions on the grounds that they have refrained from publishing even more intrusive material. Such an excuse is irrelevant, as the Commission will consider only whether the published material breached the Code. In 1994 the editor of *The Sun* suggested that by not publishing the pictures that he knew upset a complainant the most, he was complying with her wishes by publishing other photographs of her in her back garden. The Commission rejected this argument<sup>30</sup>. Furthermore, since then it has only had to adjudicate on one further instance where photographs were published of people in a private garden. That complaint was upheld — in 1999 — and the problem has not recurred since.

#### Privacy and previous publicity

13. Section C2 contains details of the landmark adjudication in the case of *Pirie v News of the World*<sup>31</sup>. The complainant — an actress — had previously undertaken publicity work and the newspaper relied on this to justify publishing an intrusive article about her. The Commission upheld the complaint explaining that any editor seeking to use such a justification must be able to show that the material complained about is proportional to that already in the public domain. It is not sufficient to argue that previous publicity about any aspect of someone's life disentitles them from their rights to privacy under the Code. Editors no longer use the excuse of previous publicity to justify any intrusion.

#### Attempts to circumvent the privacy provisions

14. Because the privacy provisions of the Code are so strict, editors know an enormous amount of true but intrusive material that they cannot publish. In *Billington v The Sunday People, Report 43*, the Commission made clear that it was not acceptable to try to publish

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<sup>30</sup> *Lancashire v The Sun, Report 26*

<sup>31</sup> *Report 49*

such material by presenting it as a story about something else. In this case, the paper claimed that an associate of a well-known actor was offering information about him to the press for a large amount of money. The story was ostensibly critical of the extortionist, but took the opportunity to repeat some of the things that he was prepared to divulge. In criticising the newspaper the Commission concluded that:

newspapers should not seek to circumvent the privacy provisions of the Code by claiming to expose those who peddle stories about people in the public eye as a cover for publishing the gist of those stories, whether founded or not, in colourful detail which results in unjustified intrusion (ibid).

15. No editor has since sought to bypass the requirements of the Code in this way, although the opportunity to do so regularly presents itself to editors.

#### Identity of journalists

16. There is no specific Clause in the Code of Practice dealing with how journalists should identify themselves, although Clause 11 deals with misrepresentation. However, the Commission has dealt with the problem of journalists trying to obtain information by not revealing their identity and thereby allowing a misleading impression of who they are to develop. In 2001 Mrs Gill Faldo complained that a journalist had gained access to her house and spoken to her housekeeper by pretending to be a friend. The journalist denied this but admitted that she had not told the housekeeper that she was a journalist. The Commission upheld a complaint of misrepresentation because the housekeeper invited the journalist in to the house and discussed the complainant in a way that she would not have done had she known the journalist's identity<sup>32</sup>.
17. This finding was published in The Sun newspaper and became an important part of the Commission's case law. Consequently, no similar breach of the Code has since been brought to its attention.

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<sup>32</sup> *Report 53.*

### Privacy and surreptitious filming

18. Undercover reporters were discovered secretly filming guests at a private party, in 2000, for a number of people who worked on the television programme *Emmerdale*. The ensuing complaint gave the Commission the opportunity to deal with the editor's justification that the journalists *might* have found guests behaving in a way that would justify publication in the public interest. The Commission dismissed this defence, saying that to have accepted it would have given newspapers *carte blanche* to intrude into any private gathering where high profile public figures might be present<sup>33</sup>.
19. No similar fishing expeditions have since been brought to the Commission's attention.

### Privacy and listening devices

20. One area of general concern in the early 1990s was the apparent reliance by some newspapers on material that appeared to have been obtained as a result of bugging or eavesdropping on telephone exchanges. Section B 2 outlines how the Code Committee reacted to this concern by introducing, in 1993, a rule forbidding such practices in the absence of a public interest. Since then only one breach of the Code has been brought to the Commission's attention — in 1996<sup>34</sup> — which clearly shows how the Code can change newspaper behaviour. Since the breach in 1996 there have been no others.

### Anonymity of lottery winners

21. In 1994, shortly after the establishment of the National Lottery, one man won over £17 million in the first rollover. He requested, and received, anonymity from Camelot but gradually his identity leaked to newspapers and three of them published it. A number of politicians asked the PCC to consider whether the newspapers had intruded into the man's privacy, even though he himself had not complained. The Commission took the opportunity to issue special guidance to the

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<sup>33</sup> *Ryle v News of the World*, Report 53

<sup>34</sup> *Wicks v News of the World*, Report 36

press on the identity of lottery winners. It said that the size of a win is not a sufficient reason to justify over-riding the winner's request for anonymity, that the press should not offer money for information about the winner except in extreme cases of fraud or scandal, that the press should use no form of harassment to discover information about anonymous winners and that it should not seek to obtain information from Camelot in breach of any confidentiality it owed to winners. The Commission hoped that the experience of that first rollover, taken with the guidance that it issued, would mean that the problem would not recur.

22. Since then, despite the enormous interest generated by the lottery and in its many winners, **no** further similar instances have occurred.

#### Privacy of children in sex cases

23. Breaches of the Code as it relates to child victims of sexual assault are virtually unheard of, thanks to the tightening of the Code in 1995 and the fact that the PCC worked in conjunction with other media regulators to eradicate jigsaw identification. But the Commission had cause on one occasion to underline that the Code also covers the accused. In 1995 a number of newspapers identified a 15-year-old boy who had been accused of sexual assault. In the event, police did not pursue the matter following questioning. Although the newspapers had not named the boy, the Commission found that it had published sufficient material to identify him, in breach of the Code<sup>35</sup>.
24. The Commission has not had to make this point again as no further breaches of the Code relating to children accused of sex offences have been complained about.

#### Payments to criminals

25. The Clause of the Code relating to payment to criminals for information is one of the most contentious and generates much comment on those rare occasions newspapers make such a payment. There have been in fact remarkably few breaches of the Code because of the widespread adherence to the rules. The importance that the

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<sup>35</sup> *A man v News of the World, Report 34*

Commission attaches to Code compliance was underlined in an adjudication in 1993 against *Hello!* magazine for paying relatives of the convicted fraudster Darius Guppy for an interview with him. The Commission condemned the magazine for affecting to misunderstand the strict terms of the Code<sup>36</sup>.

26. Standards have risen considerably in the ensuing decade. There have been no similar breaches of the Code and no suggestion since that any publication has approached the Code in the cavalier manner adopted by the magazine on that occasion ten years ago.
27. The Code also outlaws payments to the relatives of criminals, except in cases where there is a public interest. However, the Commission made clear in an adjudication against *The Daily Telegraph* in 1999 that serving the public interest did not include publishing an account of someone's personal feelings about being related to a criminal. The paper had paid for a story by the daughter of Jonathan Aitken but the Commission held that the public interest threshold is high and that the payment should not have been made<sup>37</sup>. Instances of payments to relatives of criminals are rare, and since this adjudication no newspaper has again justified such a payment on the grounds that there is a public interest in publishing someone's personal perspective of their criminal relative.

#### Payments to witnesses

28. Payments or offers of payment by newspapers to witnesses in current criminal proceedings are very rare and can only happen if there is an overriding need to make or offer the payment, and only if the material is in the public interest. The Code was tightened substantially after the Rosemary West murder trial - see Section B2 - and is currently under review again. The Commission has found only one breach of the Clause since the revisions after the West trial, regarding a payment by the News of the World in the case of Gary Glitter. The complaint centred on a contract between the paper and a woman who had some years previously claimed to have been an underage partner of Glitter (Gadd)<sup>38</sup>.

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<sup>36</sup> *Huins v Hello, Report 20*

<sup>37</sup> *Barlow v Daily Telegraph, Report 47*

<sup>38</sup> *Taylor v News of the World, Report 48*

29. An ambiguity in the contract — which made it appear as if payment was conditional on a guilty verdict in the trial - led to a breach of the Code and the Commission upheld a complaint against the newspaper. The adjudication made clear that conditional payments to witnesses are completely unacceptable and there has been no similar case since.

### Financial Journalism

30. In early 2000, the PCC launched a major investigation into The Mirror after it became apparent that its business journalists were tipping shares that they themselves had previously bought. There were allegations that the editor was also involved in buying shares just before they were tipped in his newspaper. The newspaper dismissed the journalists involved — their contracts of employment had Code compliance written into them and the company itself concluded that a breach had occurred. Although the PCC's investigation was complicated and wide-ranging, it was completed within three months and, to this date, the adjudication represents the only published external enquiry into the matter.
31. The Commission found that the editor had been guilty of a breach of the Code by not enforcing it with sufficient rigour on his newspaper and obliged him to publish its 4,000-word adjudication prominently. It appeared on pages 6 and 7 of the newspaper<sup>39</sup>. The newspaper company overhauled its internal procedures to address the problems highlighted by the investigation, and the Commission also helped other newspaper groups who wanted to write their own internal guidelines on financial journalism. More generally, the PCC worked with the industry to produce a Best Practice Note which enhanced the provisions of the Code.
32. In 2000 the British Government recognised the competence of self-regulation in this area when it declined to include in the scope of the Financial Services and Markets Act journalists who adhere to the PCC Code, and in 2002 an expert committee appointed to administer European Union legislation amended its guidance specifically to

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<sup>39</sup> *Report 50*

acknowledge the special place of self-regulation of financial journalists in the UK.<sup>40</sup>

33. The effect of the Commission's adjudication and investigation into this matter has been wide-ranging, and no further examples of breaches of the Code have been brought to its attention.

Comment, conjecture and fact

34. The Commission has never interfered with the right of people to express their views freely, provided that articles are presented in accordance with the Code of Practice. What is not acceptable is for columnists to argue their case by falsely claiming to have a factual basis for their claims. In 1997 a Sun column by traditionalist Anne Atkins claimed that it was a fact that gay men were 17 times more likely to be paedophiles than straight men, and that the average life expectancy for gay men who were not HIV positive was 43. After investigation the Commission concluded that such claims should not have been presented as fact<sup>41</sup>.
35. This adjudication effectively prevented any such confusion from recurring and, although the views of columnists excite much debate and the occasional complaint, no example of a similar breach of the Code has been brought to the Commission's attention.

Discrimination

36. An article that gratuitously included a reference to a man's religion breached the Code, particularly in the context of the piece which included words which were also arguably pejorative to his religion.<sup>42</sup>
37. Newspaper editors realise that the Commission will not tolerate breaches of the Code as it relates to an individual's race, religion, sexuality, or disability. Consequently, the Commission has not had to uphold a similar complaint since 1997.

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<sup>40</sup> See pp. 78-79

<sup>41</sup> *Crompton v The Sun, Report 41*

<sup>42</sup> *Bishko v Evening Standard, Report 40.*



### Hospitals and victims of sexual assault

38. It is worth recording here the success of the Code in protecting the most vulnerable — the ill and victims of sexual assault. Breaches of the Code in these areas are extremely rare, as outlined in Section C2 — and their very infrequency illustrates how the Code has raised standards and changed newspaper behaviour in important areas.

### Conclusion

39. Many of the complaints that the Commission deals with are of course similar. Inaccuracies, objections to court reporting, the publication of addresses, kiss and tell stories — to name but a few — all recur in one form or another because they keep touching the lives of different people. Besides, they are frequently issues where the complaint is more likely to concern an objection to publicity than to genuine privacy intrusion. But in the specific areas outlined above, the Commission has, through its adjudications, been able to change key aspects of journalistic conduct. Those who benefit from this are clearly members of the public — both as consumers of newspapers and as the potential subjects of media scrutiny. In averting further breaches of the Code in this way, the Commission has demonstrably been responsible for raising standards.

B (4) The Code and Editors Contracts of Employment

1. One of the areas from which the Code derives its authority — and the Commission consequently has available to it a powerful sanction — is the fact that compliance with the Code is one of the conditions of employment of virtually all editors and staff journalists.

National newspapers

2. Among national newspaper groups, the following refer to the Code of Practice in staff contracts and require editors and journalists to abide by it:
  - Associated Newspapers;
  - Guardian Media Group;
  - Mirror Group Newspapers;
  - News International;
  - Pearson (Financial Times);
  - Telegraph Group.
3. While Express newspapers do not have a specific requirement in their contracts of employment, they do adhere to the Code and supply copies of it to all journalists. A specific inclusion in contracts is currently under consideration. The same applies to Independent newspapers. Commitment to the Code — and its application to staff journalists — is therefore total among the national press.

Regional and local newspapers

4. Regional and local newspapers circulating throughout the United Kingdom require their editorial staff to adhere to the professional and ethical standards laid down in the Code of Practice drawn up by the newspaper and magazine industry and enforced by the PCC. This was confirmed by a recent survey of Newspaper Society members covering 97% of all regional and local newspapers circulations (weekly circulation — 68,632,380) covering 1,138 daily, weekly and Sunday newspapers. This involves, therefore, in excess of 7,000 journalists.

B (5) The partnership approach: working with Government and others

to improve the Code

1. Earlier parts of this Section have underlined how flexible the Code is and how open the industry is to suggestions for its amendment. Section B2 in particular charts the Code's development in response to the concerns of the public, the industry and Whitehall.
2. One important facet of this process is the degree to which the newspaper industry, the Commission and Government have co-operated to tackle issues of importance to press and public. And it has been the Code which has been central to this. This Section sets out some examples of that — as well as the way the Commission, in issuing from time to time its own guidance on specific subjects, has built on that.

The Data Protection Act 1998

3. Discussions over the implementation of the EU Data Protection Directive in many ways provided the model for the co-operation between Government and industry over legislative issues that arise with ramifications for both newspaper readers, and for press freedom.
4. It was clear as early as 1995 that the Directive implemented without amendment would substantially erode press freedom by classifying as private large amounts of information that were clearly not intrinsically so. The Directive itself allowed for exemptions for journalistic material, but the question that had to be addressed was how to achieve that at the same time as ensuring maximum protection for the public.
5. Consultations to achieve this began under the last Conservative Government and concluded under Lord Williams of Mostyn after the General Election of 1997. The solution to the problem — balancing rights of individuals with the right to freedom of expression — centred, among other things, on the newspaper industry's Code of Practice.
6. An amendment was made to the Bill to provide a media exemption, which subsequently became Section 32 of the Data Protection Act 1998. That included, as a defence for newspapers from action by the Data Protection Commissioner and others, the fact that a newspaper or

magazine had complied with a Code of Practice designated by Parliament for the purposes of the Act. This was the first time the Code of Practice had been designated in this way — and underlined its growing authority and importance. Its incorporation into the Act guaranteed that the privacy rights of individuals would still be protected, without any impact on the ability of the press to report in the public interest.

### The Human Rights Act 1998

7. This model was successfully utilised when the PCC and the newspaper industry raised serious concerns about the proposed legislation to incorporate the European Convention of Human Rights into UK law.
8. At the time of the passage of the Bill through Parliament, the former PCC Chairman Lord Wakeham said that there was a serious danger that the legislation could become a back door privacy law that would only be accessible to the rich and famous. There would be at best, therefore, a two tier system of redress; at worst, the PCC could be undermined to such an extent that it ceased to be effective — leaving the vast majority of complainants with no redress at all. Issues were also raised about the serious and dangerous possibility that the legislation might be used for the purposes of prior restraint.
9. The Government acknowledged these concerns and, after consultation with the Commission and the Code Committee, moved to amend the Bill in June 1998. The result was what became Clause 12 of the Act on freedom of expression. During the passage of the Bill the then Home Secretary, the Rt Hon Jack Straw MP, said that:

the new Clause provides an important safeguard by emphasising the right to freedom of expression. Our intention is that this should underline the consequent need to preserve self-regulation. That effect is reinforced by highlighting in the amendment the significance of any relevant privacy code, which clearly includes the Code operated by the PCC (*Hansard*, 2<sup>nd</sup> July 1998, col. 541).
10. Again, compliance with the Code — along with other measures introduced into Section 12 — was a key part of a strategy to ensure that

the rights of the public were protected at the same time as self-regulation was preserved. The subsequent development of case law under the HRA is set out in Section C5.

11. It is important to note that, following the passage of the Act, the Code Committee also decided to amend the Code of Practice to reflect the terms of Clause 12. A new sub Clause was added to the Code's public interest defence which makes clear that:

There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public.

### Youth Justice and Criminal Evidence Act 1999

12. During the passage of the Youth Justice and Criminal Evidence Bill in 1998-9, concerns were raised in Parliament about the reporting of children who were victims of, or witnesses to, crime. It had originally been proposed that any reporting of children in these positions should be banned by law. However, following consultation between Government, PCC, and industry it was recognised that legislation may not be necessary to deal with this issue. It was also agreed that the Code Committee would look at ways to deal with these concerns through self-regulation.
13. Working in conjunction with the Home Office, the Code Committee amended Clause 10 (Reporting of Crime) of the Code to include a provision that, while it should not be interpreted as restricting the right to report judicial proceedings —  
  
particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of, crime.
14. Underlining the fact that newspapers have taken this part of the Code very much to heart, the Commission has only received — and upheld — one complaint under this part of Clause 10 since it was included in the Code<sup>43</sup>.

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<sup>43</sup> *Hall v Eastbourne Argus*, Report 59; and see also, *Annual Review 2002* (p. 251) in Annex 5.

Financial Services and Markets Act 2000

15. Further complex issues arose during the passage of the Financial Service and Markets Act in 2000. On this occasion, the PCC and the newspaper industry pointed out that some of the proposals contained in the Bill — particularly on issues such as external disclosure of financial interests — were undesirable in theory and would be unworkable in practice.
16. Following wide consultation, the Treasury accepted the case and agreed to withdraw those provisions of the Bill which it would have proved impractical to implement. At the same time the PCC — which had only recently adjudicated on a number of complaints about share tipping on a national newspaper — agreed to issue a note of Best Practice to supplement the terms of Clause 14 (Financial Journalism) of the Code.
17. This Best Practice note was drawn up following a survey of the various internal procedures in place on national and regional newspapers and relevant magazines, and a copy is reproduced in Appendix VII. It covers areas such as the internal and external disclosure of shareholdings, guidance on the type of transactions covered by the Code and definitions of a number of its terms.

EU Market Abuse Directive

18. The same set of issues arose in the autumn of 2002 — this time as a result of moves to implement the EU Directive on Market Abuse, which it was feared, could undermine the tough standards set out in the Code of Practice by imposing unworkable legal controls in this area.
19. Following consultation across the newspaper industry, in which the PCC took part, the Committee of European Securities Regulators (CESR) — the body based in Paris responsible for drawing up guidance about how the Directive should be implemented — adopted measures to safeguard the position of self-regulation in all EU Member States in which it exists. The PCC worked closely with CESR on its implementing guidelines, in a way which will protect

self-regulation, in the interests of complainants, not just here but across Europe<sup>44</sup>.

20. As a result of that co-operation, no changes will be needed to the PCC Code when the Market Abuse Directive is implemented in the UK, although there may need to be some minor changes to the PCC's Best Practice guidance note.

#### Payments to witnesses

21. Another recent example of the co-operation between Government and the PCC concerns the issue of payments to witnesses. Here, the Lord Chancellor announced in March 2002 that he was minded to ban by law payments to witnesses in active criminal proceedings.
22. The PCC and the industry responded constructively to these proposals — pointing out that there was (a) no proven need for such a ban and (b) that the Lord Chancellor's aims could much more effectively be met through changes to Clause 16 (Payments for Article) of the Code of Practice.
23. The Lord Chancellor announced in August 2002 that he accepted the case for possible changes to the Code in place of a legislative ban, and laid out various proposals. At the time of the submission of this report to the Select Committee, constructive discussions were ongoing between the PCC, the Code Committee and the Lord Chancellor's Department to agree possible revisions to the Code.

#### Science Reporting

24. Although in a rather more specialist area, the PCC co-operated with The Royal Society and the Social Issues Research Council (SIRC) following a report from the House of Lords Select Committee on the issue of how science matters are reported in the media. Following these discussions, SIRC produced a number of guidelines for newspapers and practitioners about these matters, which were endorsed by the Commission at the time of their publication<sup>45</sup>.

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<sup>44</sup> This is also a subject which affected members of the Alliance of Independent Press Councils of Europe, who discussed this subject at length at their conference in Malta in October 2002.

<sup>45</sup> For further information, see Annual Review 2000, p.13.

### Court Reporting

25. The PCC also co-operated with the Lord Chancellor's Department following an initiative in 1997 to raise standards of Court reporting. Following discussions between the LCD and the PCC, new recommendations were issued by the Department to judges throughout the country. These recommendations — principally that judges should produce a written note of their sentencing remarks for distribution to the media in cases which might attract media attention — complement the PCC's existing guidance in this area.

### Conclusion

26. This Section outlines the manner in which both the Code Committee and the PCC have worked imaginatively and constructively with Government — both in the UK and at EU level - to tackle important issues of concern above all to the public but also to the media. Some other examples — particularly on the issue of mental health — are set out in Section D2.
27. The Commission will continue to respond to concerns about standards of reporting in different areas, and to work in partnership with Government and others to deliver the aim of higher standards, underlining the flexibility of self-regulation over any form of legal control.



**SECTION C**

**PRIVACY**

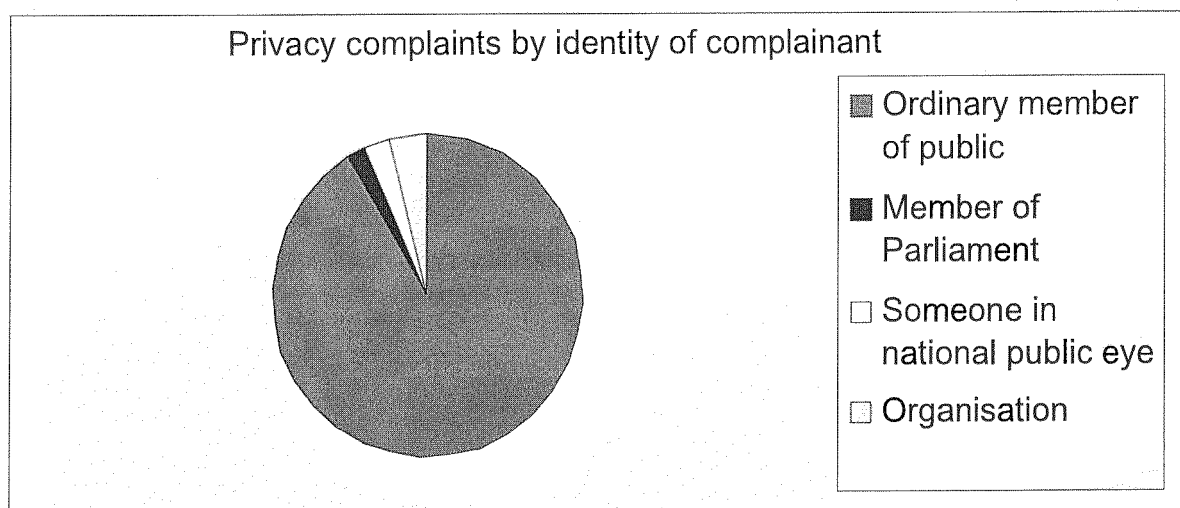


**C (1) Who complains about intrusion and what do they complain about?**

1. According to some widespread myths, privacy is an issue which affects just famous people, and intrusion is the sole preserve of the red top tabloids.
2. In fact, as this Section sets out as an introduction to the issue of privacy, public interest, public figures and the Human Rights Act, those myths are unsubstantiated by the facts.

Privacy and ordinary people

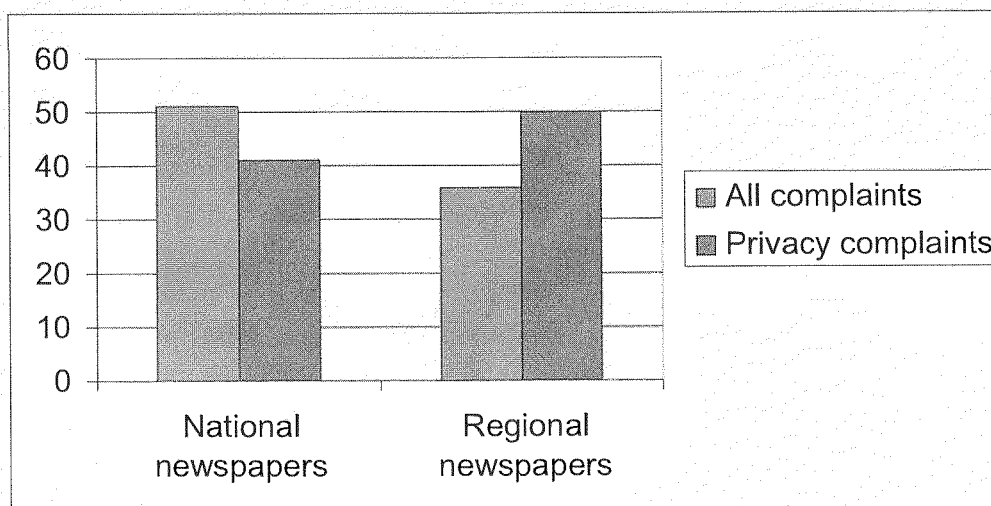
3. To begin with, we undertook an analysis of the identity of those who made complaints in 2002 about intrusion into privacy under one of the relevant Clauses of the Code of Practice<sup>46</sup>. As the Table below illustrates, more than nine in ten of them were ordinary members of the public, while only 5% were national public figures.



4. Unsurprisingly, therefore, the Commission receives more complaints about intrusion into privacy by local and regional newspapers, including newspapers in Scotland, than it does about national newspapers.

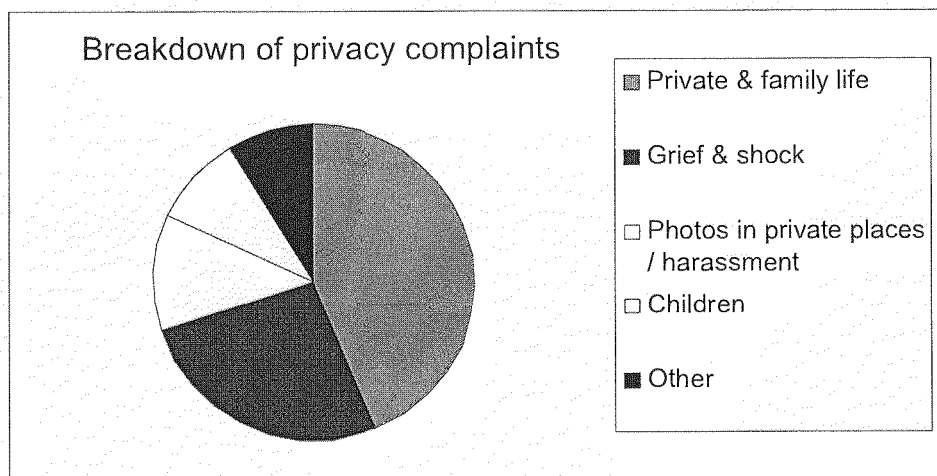
<sup>46</sup> A similar survey in 2001 revealed very similar results.

5. As the Table below shows, although regional and local newspapers in England and Wales, and publications special to Scotland, accounted for 36% of the *total* of all complaints in 2002, 50% of complaints raised under one of the privacy Clauses of the Code related to them.



6. Privacy complaints fall under different areas and different parts of the Code, as the subsequent Table below illustrates<sup>47</sup>.
- Some 45% are brought under Clause 3 of the Code, and relate to respect for private and family life.
  - A quarter relate to intrusion into grief and shock.
  - One in eight relates to the use of photos of people in private places, and harassment.
  - Just under 10% are about the privacy of children.

<sup>47</sup> For full details see Annual Review 2002, p. 251, in Annex 5.



7. It is important to bear these statistics in mind in any debate about privacy — and in any comparison about the relative efficacy of privacy laws and self-regulation for ordinary people.

## C (2) How the PCC has developed privacy jurisprudence

### The PCC's credentials

1. Over the last twelve years, the Press Complaints Commission has handled nearly 30,000 complaints — of which about 8,000 have involved some aspect of personal privacy under the relevant sections of the Code (privacy, children, grief and shock, hospitals, reporting of crime, victims of sexual assault).
2. This gives the PCC an unrivalled knowledge of, and experience in, the issues of privacy and media intrusion, and the handling of complaints about it. None of the other regulatory bodies has such a range of experience<sup>48</sup>.
3. This bank of knowledge has allowed the Commission, over the years, to build up a body of jurisprudence on privacy which is an important guide for newspapers, and for individuals seeking to ensure maximum protection for themselves. It has also allowed the Commission gradually to ratchet up standards.
4. Privacy complaints are supervised by a Privacy Commissioner — it has been Professor Pinker since 1994 — as another way of ensuring ongoing complaints are handled in a manner consistent with the Commission's case law.
5. Crucially, the Courts themselves have recognised the importance of this case law — as Mr Justice Silber noted in his judgement on the judicial review case brought by Anna Ford<sup>49</sup>.
6. Furthermore, the Courts themselves have adopted the PCC's approach to privacy in key judgements in the cases of Naomi Campbell and footballer Gary Flitcroft — and in particular, the extent to which public figures who compromise their own privacy cannot expect the same

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<sup>48</sup> The Broadcasting Standards Commission did not receive any complaints for the year 2001-2002 solely about privacy, and only 6.8% of the total complaints received were about fairness and privacy.

<sup>49</sup> See p. 128

absolute rights to freedom from intrusion as other people who have not.

7. The purpose of this Section is to outline how the PCC has built up that case law in key areas. First, however, it might be useful to set out a number of broad propositions about privacy and the press.

### Privacy — home truths

8. The first clear lesson the PCC has learned by experience is that the issue of privacy is — unlike that of accuracy in reporting — an art not a science. Indeed, there can never be an overarching definition of what privacy is — everyone has a different view — or what constitutes the public interest. Each case has to be judged on its merits. That is just one of the reasons why the PCC's flexibility, and the broad nature of the Code, are more constructive in this area than law.
9. Second, there are no absolutes in privacy. Every issue has to be part of a balance. Any intrusion — no matter how minor — has to be balanced against a range of other factors, including whether:
  - there is a public interest justification for the intrusion;
  - another individual involved has a right to freedom of expression;
  - any of the material is already in the public domain, or is about to become available to the public;
  - an individual — particularly a celebrity — has compromised his or her right to privacy by trading off a false image or selling private stories and pictures on their own terms; and
  - where an individual has compromised their right to privacy, any subsequent intrusion is proportionate to that compromise.
10. Third, privacy is not just an issue about famous people. As made clear in the previous Section, the vast majority of complainants to the PCC about personal privacy are ordinary people temporarily caught up by force of circumstance in media attention. However, many of these

complaints turn out to be about unwanted publicity — such as the publication of a home address or a picture taken in a public place — rather than an intrusion into something intensely personal.

11. Fourth, privacy is not just about tabloid newspapers. While many people associate only a handful of publications with the issue of intrusion<sup>50</sup>, the truth is that the issue runs across the media. For instance:
  - in 2002, the PCC received more privacy complaints about local newspapers than national newspapers — and it upheld complaints of intrusions about broadsheets as well as tabloids; while
  - in 1999, the PCC upheld more privacy complaints about magazines than about any other type of publication.
12. Fifth, as a result of all these issues, privacy is not an area which can be easily managed as a legal process. The flexibility of the editors Code allows the PCC wide discretion in this area — including upholding complaints which could never be successful at law under the terms of the Human Rights Act<sup>51</sup>. Furthermore, the PCC's procedures — as is set out elsewhere in this submission — allow for the process of a complaint to be confidential, unlike the very public glare of the Courtroom (as Naomi Campbell found out to her cost)<sup>52</sup>.
13. Finally, the Courts themselves have recognised the importance of this case by case approach to building up a body of jurisprudence. Furthermore it has, over time, helped to raise standards of reporting in this area (as we set out in Section B3), as editors are expected to — and do — take note of the way the PCC has developed its thinking.
14. Against this background, the rest of this Section sets out — with relevant case studies — how the PCC has sought to build up a body of

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<sup>50</sup> See Professor David Morrison and Michael Svennevig, *The Public Interest, the Media and Privacy*, (March 2002), pp. 91-96.

<sup>51</sup> For example: *A woman v Hastings and St Leonard's Observer, Report 41*, in which the Commission ruled that the newspaper should not have identified her son by name or mentioned details of his medical background (which included learning difficulties), even though they were revealed in open court.

<sup>52</sup> See also Annex 4.



precedent. Copies of the adjudications concerned can be found in Appendix VIII.

## SELLING AND COMPROMISING PRIVACY

14. The PCC has always taken the common-sense view that privacy is not a commodity that can be sold on one person's terms. If an individual sells a story about his or her private life, then they limit their ability to complain and to protect themselves in future. Similarly, people who talk about private matters in public cannot be surprised if other newspapers write about similar matters - provided they do so in a manner which is proportionate. In short, individuals can intrude into their own privacy. As this paper makes clear, most of the Commission's work is concerned with complaints from ordinary members of the public. However, it is of course logical that it is more likely to be those in the national public eye, who have had a sustained exposure to the media, who will have sold or compromised their privacy in some way. These cases provide some useful examples which all editors bear in mind in deciding whether publication of a particular story is likely to raise a breach of the Code.
15. **Carling v The Sun** (*Report 32, 1995*)

In 1995 the Commission rejected a complaint from Julia Carling against an article in *The Sun* which had reported on her own relationships and that of her husband and the Princess of Wales. The Commission took into account that Mrs Carling had clearly placed details of past and current relationships into the public domain by virtue of articles and interviews aimed at self-promotion. She therefore could not claim full protection under the terms of the Code about an article that sought to contrast or clarify the impression that she herself had publicly given. This decision did not mean that previous publicity *automatically* disentitles a complainant to privacy (see Scott and Pirie, below, for example); but in this particular case the Commission felt that the details of the complaint were not significantly removed from details that had been already placed in the public domain by the complainant herself.

16. **Scott v News of the World** (*Report 33, 1995*)

The report concerned the allegations of a man about an alleged affair with the complainant conducted fifteen years before. The Commission noted that the matter was not current or currently in the public eye. Indeed, the allegations focused on events that pre-dated Ms Scott's celebrity. Therefore, it considered that her subsequent exposure to publicity did not disentitle her to the right of privacy in a matter that she had never placed, nor had ever shown signs of placing, in the public domain. Ms Scott had not revealed information of a similar or a proportionate nature to those exposed by the newspaper and therefore was protected by the Code of Practice. Furthermore, the Commission considered that complaint over privacy in conjunction with a complaint over accuracy. It felt that, as the newspaper had not sufficiently substantiated its claims, the article was in itself misleading in breach of Clause 1. It therefore followed that, as Ms Scott was entitled in any event to be protected from unsubstantiated allegations, her privacy had been unjustifiably intruded upon. This adjudication underlined that the Code is most powerful in protecting the privacy of individuals where they have never sold or compromised their privacy in any way.

17. **Pirie v News of the World** (*Report 49, 2000*)

This adjudication concerned an article based on the story of the ex-fiance of a well-known actress. The Commission again had to consider whether the complainant had put sufficient material about her private life into the public domain to disentitle her to the protection of the Code. In this case, the Commission found that, although she had given a number of press interviews, she had not spoken about such highly intimate matters and had not therefore lost the protection of the Code. The Commission also made clear in this adjudication that it would balance a newspaper's right to freedom of expression against an individual's right to privacy, but concluded that on this occasion the newspaper had made the wrong decision and the complaint was upheld.

18. **Attard v Manchester Evening News** (*Report 55, 2001*)

The complaint was brought by the parents of a baby who was the sole survivor of a pair of conjoined twins. An injunction prevented the media from identifying the girl, Gracie Attard, but the family went to court to overturn it so that they could sell information and pictures about Gracie to the media. The Manchester Evening News obtained photographs of Gracie taken outside the hospital, but - after the newspaper published one - lawyers for the family successfully applied for another injunction, which stated that photographs could only be used with the permission of the parents. The parents then complained to the PCC that the pictures were intrusive and damaged the welfare of the child. The Commission declined to adjudicate under Clause 3 because of the Court's decision but rejected all of the other complaints. First, it did not consider that a photograph of the infant's face was a matter that concerned her welfare. Second, it drew attention to the fact that the Code - mirroring exactly the terms of Human Rights Act - specifically charges the Commission with having regard to the extent to which material has, or is about to, become available to the public with the consent of the complainants. That was clearly the case in this instance. In its adjudication, the Commission said that it has always taken the common sense view that where a complainant releases or sells information or photographs then they may become disentitled to the protection of the Code in certain circumstances. Privacy is - in the Commission's opinion - not a commodity which can be sold on one person's terms.

19. **Feltz v The Mirror/Sunday Mirror** (*Report 56, 2002*)

The television personality Vanessa Feltz complained that pieces concerning an alleged sexual relationship that she had had with a man were inaccurate and intrusive. In dismissing the complaint about privacy, the Commission took account of the large amount of material in the public domain concerning her relationships, in particular the breakdown of her marriage. The Commission noted that as the public had been kept closely informed about the state of the complainant's previous relationships it was not unreasonable for people who had been in relationships with her to talk about them in

public, providing it was in a manner proportionate to the material that was already in the public domain. It concluded that to deny them this opportunity would arguably infringe on their rights to freedom of expression.

## PICTURES - PRIVATE OR NOT?

20. A number of complaints involve photographs of individuals taken without their consent or knowledge. It is a common misunderstanding that the Code outlaws the use of long lens photography without consent: it actually says that use of long lenses is unacceptable only where pictures of people in *public or private places where they have a reasonable expectation of privacy* are published. Again, the following key decisions underline these points.

21. **Ford/Scott v Daily Mail/OK! Magazine** (*Report 52, 2000*)

The Commission rejected complaints that photographs of the BBC newsreader Anna Ford and her partner in their swimwear were taken with a long lens when they were in a place where they had a reasonable expectation of privacy. It found that a publicly-accessible Majorcan beach which was overlooked by other holiday apartments, at the height of the summer, was not somewhere where someone could reasonably expect privacy. It also found that publication of the photographs did not show her disrespect for her private life. This adjudication was subsequently challenged on judicial review - and the Commission's ruling clearly upheld by the Administrative Court.

22. **John v Sunday Mirror** (*Report 53, 2001*)

Mrs Renate John complained, *inter alia*, that photographs of her in a car park and on a petrol station forecourt were taken in a place where she had a reasonable expectation of privacy. The Commission did not agree and noted that she was outdoors and somewhere where any number of people were entitled to be without restriction. It also found that publication of the photographs did not show her disrespect for her private life.

23. **McCartney v Hello** (*Report 43, 1998*)

The Commission deprecated photographs of Sir Paul McCartney taken while he was in Notre Dame cathedral shortly after the death of his wife. It thought that the inside of a Cathedral was clearly a place where, although not private property, a person would have a reasonable expectation of privacy.

24. **MacQarrie v Scotland on Sunday** (*Report 47, 1998*)

The Commission held that the inside of an office is a private place when it upheld a complaint from a council worker about a photograph of her taken using long lens photography while she was sitting at her desk.

25. **Tunbridge v Dorking Advertiser** (*Report 58, 2002*)

The Commission upheld a complaint from a member of the public who had been photographed without his consent as he was eating afternoon tea in a quiet tearoom in Dorking. It said that the complainant had a reasonable expectation of privacy, and added that the Code makes clear that such places include both public and private property. The Commission concluded that customers of a quiet caf could expect to sit inside such an establishment without having to worry that surreptitious photographs would be taken of them and published in newspapers .

## **INTRUDING INTO PRIVACY IN THE PUBLIC INTEREST**

26. Nine of the Code s sixteen Clauses carry a public interest exemption — meaning that an editor can proceed with publication of material that might breach the Code if it is in the public interest to do so. The Code of Practice outlines the sort of material that might be considered to be in the public interest, such as exposing a crime or misdemeanour, protecting public health and safety or preventing the public from being misled. This list is **not** exhaustive however, and the Commission accepts that different circumstances will throw up different public interest justifications. The Code also accepts that there is a public interest of freedom of expression itself and therefore directs the Commission to have regard to the extent to which material has, or is

about to, become available to the public. Section C4 deals with this in more detail — but a few illustrations are included here.

27. **Allason v Daily Mirror** (*Report 37, 1996*)

The Commission found a sufficient public interest in a story about an MP's affair with a married woman. While asserting that the status of a public figure did not necessarily justify the publication of their intimate details, it noted that Mr Allason had led his constituents to believe - in his 1992 election literature - that he was a family man, an impression that had not since been corrected. There was therefore a public interest in revealing details of his private affair.

28. **West v Daily Mail** (*Report 37, 1996*)

An article which reported the suicide of John West during his trial for rape included family photographs and a reference to his first wife, who complained that the details were intrusive. The Commission sympathised but considered that the public interest in the case was great and that it had become of sufficient magnitude to warrant the publication of personal family details.

29. **Robson v Evening Standard** (*Report 42, 1998*)

The Commission found a public interest in the identification of a council worker who had been accused of warning a friend not to use a particular care worker as a babysitter, as he was a paedophile, but doing nothing to warn the public about him.

30. **Noble v Jersey Evening Post** (*Report 57, 2001*)

There was no public interest, however, in reporting details of a woman's rental payments. The information had been supplied by a correspondent and published on the letters page but this was not an excuse for breaching the Code and the Commission made clear that an editor is responsible for the material that appears in his or her newspaper, no matter what the source.

31. **Tomlinson v Peterborough Evening Telegraph** (*Report 60, 2002*)

The complainant — a woman convicted of drug smuggling who was said to have amassed a considerable fortune from her illegal behaviour — complained that her local newspaper published photographs of the inside of her house. Normally such photographs would of course be a breach of the Code, but in these circumstances the Commission found a number of reasons why this was not the case. Not only had the photographs been taken by and provided by the police, but the Commission also agreed with the newspaper that there was a public interest in illustrating how the proceeds of her crimes had been spent.

32. **Tonner v News of the World (Scotland)**, (*Report 60, 2002*)

The complainant was a lesbian BBC employee who became pregnant following artificial insemination. She planned to bring up the child with her partner and complained that an article about the pregnancy breached Clause 3 (Privacy). The Commission found that while there was certainly a public interest in stories about same-sex parenting, the level of detail in the piece — particularly concerning how the baby was conceived and other health matters — was not justified and the Commission upheld the complaint. This adjudication reinforced that newspapers must, when publishing intrusive detail, either demonstrate that it has been consented to, is in the public domain, or is in the public interest. It also underlined that while the subject matter of some stories might be in the public interest, there might be elements to them — concerning someone's health, for example — which are not.

## PROTECTING THE PRIVACY OF CHILDREN

33. While the Code gives greater protection to children under Clause 6 of the Code, it is another common misconception that it outlaws all pictures of children taken without consent. The Commission will bear in mind whether the photographs concern a child's welfare, where they were taken and whether they might embarrass or inconvenience a child. As noted in Section 1 above, the Commission will also take into account the extent to which a parent has compromised the privacy of a child.

34. **Donald v Hello! Magazine** (*Report 52, 2000*)

The complainants said that a photograph of their child, taken while he sat in a push-chair in a public street, breached the Code. The Commission noted that the Code does not require editors to seek consent before publishing *any* pictures of a child under the age of 16, as this would mean no pictures at all could be published without consent. It was only those that could have involved the welfare of the child that required consent. In the case of Donald, the photograph was an innocuous image, unaccompanied by personal details and taken in a public place, and was therefore not in breach of the Code. The Commission reaffirmed this principle in *Kingston v Hello! Magazine, Report 55*.

35. **Rowling v OK! Magazine** (*Report 55, 2001*)

On the other hand, pictures of the 8 year old daughter of the writer JK Rowling were a breach of the Code. She was on a private beach and the Commission also had regard to the fact that Ms Rowling had gone to considerable lengths to protect her daughter's privacy. Indeed, it was precisely because the complainant had protected her daughter in this way that photographs of her would affect her welfare. Her image was not known because her mother had not put her into the public domain in any way, and the photographs were only taken and published because of the fame of her mother.

36. **Kenewa v Sunday Mercury** (*Report 50, 2000*)

The Commission upheld a complaint from an asylum seeker after the decision to give him two homes was criticised by the newspaper. The newspaper had interviewed some of his 15 children, and identified them in the article, in a manner that breached the Code. As the subject matter was likely to provoke a strong reaction in readers the newspaper should have taken particular care to take into account the welfare of the children.

37. **Granton v Daily Post** (*Report 59, 2002*)

Similarly, the Commission reaffirmed that reporters must not approach schoolchildren under the age of 16 for interviews without



the consent of their parents or, if at school, a responsible adult. In this case the complainant's 15 year old daughter had consented to an interview about her former boyfriend who had been convicted of murder. The adjudication made clear that whether or not children of that age agree to an interview is irrelevant: they must have parental consent.

**38. Price v The Observer** (*Report 49, 1999*)

The high degree of protection contained in Clause 6 was emphasised in this adjudication on a complaint from parents of children who were photographed at a youth club disco. The photographs — which were of an embarrassing nature — had been authorised by the head of the youth centre but there was some doubt as to whether he had known that they were destined to be published in a national newspaper rather than in a student's portfolio. The Commission made clear that the onus was on the newspaper to satisfy itself that the relevant consents had been given, and that it should have been more thorough in its pre-publication checks by contacting the youth centre rather than just relying on the word of the photographer.

**39. Blair MP v Mail on Sunday** (*Report 47, 1999*)

An article reported the decision by a local Catholic school to admit Kathryn Blair while rejecting other local children. The Commission had to consider whether the story, in as much as it focussed upon the daughter of the Blairs, was in the public interest. It did not deny the possibility that exceptional circumstances may arise in the future in which the child of a public figure could be named in relation to a story of great public interest. However, it believed that, in this case, the naming of the child was not justifiable in the context of the article as a whole. Furthermore, the Commission noted the Code's responsibility to protect vulnerable children. In this case, it considered that Kathryn would start school at the centre of a row over the validity of her admission and felt that the story therefore had significantly affected her welfare at a particularly crucial time.

40. The Commission was also concerned about the apparent inaccuracy of the story. The Commission felt that the implication of the article, that Kathryn Blair had been accepted at the school as a result of her

father's position, had not been properly substantiated by the newspaper. As a result, it considered that the article was in breach of Clause 1 (Accuracy) of the Code of Practice. It therefore followed that, because the article was misleading, there could be no public interest in its contents. The breach of Clause 1 necessarily would demonstrate a breach of Clause 6 (Children) in that untrue allegations connected to a child would automatically harm her welfare and obviate the public interest defence. The Commission - in line with the precedents set out in Section 1 - also noted the extent to which Mr and Mrs Blair had gone to protect the privacy of their daughter.

41. **Blair MP v Daily Telegraph** (*Report 57, 2002*)

The Commission upheld a complaint about an article which revealed the university to which Euan Blair had applied. The application concerned Euan Blair's private choices and the Commission considered that the press must be able to demonstrate that commenting upon such applications at a crucial time in an individual's education is - in the terms of the Code - "necessary". There was no public interest in the story as the decision to apply to the university did not put Euan Blair at odds with Government policy or any public statement of his parents. However, in underlining the fact that the children of the Prime Minister are not public figures in their own right, the Commission warned that it is much more difficult to protect any individual where he or she begins to acquire a public profile in their own right, for instance by making public appearances. Privacy is best maintained when not compromised in any way.

42. **Hall v Eastbourne Argus** (*Report 59, 2002*)

Upholding a complaint from the father of a 12-year old victim of crime, the Commission adjudicated for the first time under the new part of Clause 10, which states that particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of, crime. In this case the newspaper had identified the complainant's daughter — who had been the victim of an attempted kidnap — in an interview with another victim. Sufficient regard to the vulnerability of the girl had not been paid by the newspaper, and the complaint was upheld.

## PROTECTING THE PRIVACY OF CHILDREN AT SCHOOL

43. Children at school are, of course, away from the care of their parents — and the Code therefore includes provisions to ensure that children should neither be photographed or interviewed at such times without the permission of the school authorities.

44. **Munro/Bancroft v Evening Standard** (*Report 54, 2001*)

The Commission issued a stern rebuke to the newspaper after an undercover reporter went into the school pretending to be a schoolteacher. The Commission ruled that such fishing expeditions for information are unacceptable, and that in speaking to the children in his quest for a story he had repeatedly breached the Code.

45. **Black v Bedfordshire on Sunday** (*Report 43, 1999*)

The chairman of governors of a school complained that pupils at the school had been approached by journalists following attempted suicides by some fellow pupils. The editor tried to justify the journalists' behaviour on the grounds that the approaches were informal, but the Commission made very clear that such an excuse was not acceptable and that the Code is at its strictest when it deals with vulnerable groups such as children.

46. **Brecon High School v Brecon and Radnor Express** (*Report 57, 2002*)

A photograph taken of a 14-year-old boy on school property and published in a local newspaper was a breach of the Code, even though the photograph was taken with the consent of the boy's mother. The ruling underlined that journalists and photographers must seek permission from relevant authorities before photographing or interviewing children when they are at school.

## PROTECTING THE PRIVACY OF THOSE WHO ARE ILL

47. The Commission has made clear that the protection of the vulnerable is at the heart of its work — and those who are unwell and also the subject of media interest are often amongst the most vulnerable. It is

particularly important that the Code is followed strictly when people are in hospital. In fact, there have only been a very small handful of breaches of the hospitals Clause as it is one of the areas where journalistic standards have improved dramatically over the last decade. However, mistakes do happen from time to time and the Commission will always take a harsh view of any newspaper that unnecessarily intrudes into the privacy of those who are ill.

48. **Hutchison v News of the World** (*Report 37, 1996*)

A reporter had not adequately identified himself to responsible hospital authorities when seeking an interview with a woman who had been injured in the Canary Wharf terrorist bomb. Although the breach of the Code was inadvertent, the Commission upheld the complaint because it is essential that the Code is strictly adhered to in light of the vulnerability of patients.

49. **Jennings v Eastbourne Gazette** (*Report 60, 2002*)

In the first serious breach of the hospitals Clause for some years, a journalist went to the bedside of a man who had been badly injured in a car accident. The journalist had not identified himself to the relevant authorities. To the editor's credit he dismissed the journalist and apologised to the complainant but the matter was so serious that the Commission had no hesitation in issuing a robust adjudication criticising the newspaper.

50. **Taunton and Somerset NHS Trust v The Mirror** (*Report 54, 2001*)

There are cases, however, when the letter of the Code can be breached in the public interest. In this case, the wishes of a hospital that was caring for a brain-damaged victim of domestic violence and those of her family were at odds. The woman's family desperately wanted publicity for what it saw as the feeble sentence handed down to the woman's attacker, so it invited a photographer to accompany them on a visit and take a photograph of her. The photographer did not in these circumstances ask permission from a responsible executive. The Commission concluded that there was a sufficient public interest because of the views of the woman's parents, who were entitled to express their disgust at what they saw as the leniency of the sentence.

Furthermore readers may not have been able fully to appreciate the gravity of the situation — and the consequent strength of the parents feelings — had the photograph not been published .

51. **A couple v Aberdeen Evening Express/Press and Journal** (*Report 56, 2001*)

Two papers intruded into the privacy of a 15-year-old boy by identifying him as a tuberculosis sufferer. The editors had argued that the information was in the public domain by virtue of it appearing on the same day in the broadcast media. However, the Commission made clear that editors cannot rely on such an argument because those references may be subject to complaints to other regulatory bodies. They must make their own judgements based on the newspaper industry s Code.

52. **Brown v Kentish Express** (*Report 36, 1996*) / **Rutherford v Sunday Express** (*Report 37, 1996*)

Early into the nvCJD health scare, the Commission made clear in these two adjudications that sufferers should not be identified without the consent of relatives. Apart from one rogue breach of the Code in this respect — *A man v Northern Echo and Darlington and Stockton Times, Report 53* — no further instances of any problems in this area have come to the Commission s attention.

53. **A woman v Hastings and St Leonard s Observer** (*Report 41, 1998*)

The mother of a suicidal 17-year-old boy who had some mental health difficulties complained that details of his condition were published in the local paper. Even though they had been firmly put into the public domain as a result of a court case that the complainant was involved in, the Commission still upheld the complaint, making clear that the Code exists to afford protection to the vulnerable over and above that afforded by the law . In this case the editor should have taken the boy s medical condition into account and the complaint was upheld.

## PROTECTING VICTIMS OF SEXUAL ASSUALT

54. It is difficult to conceive of potentially more vulnerable people than victims of sexual assault. The Commission interprets the Code in its strictest possible sense, with no public interest or public domain defences allowable. Breaches of the Code — which are very rare — are almost always inadvertent.

55. **A woman v Clydebank Post** (*Report 41, 1997*)

The Commission considered that the newspaper had published material likely to identify a rape victim when it published a court report describing the distinctive clothing that the woman was wearing at the time of the attack. It also mentioned a hobby that the victim had, and the combination of details resulted in sufficient information being published for local people to be able to identify the complainant. Although legally entitled to publish these details because they were given in open court, the Code binds editors to rules over and above those stipulated in the law.

56. **Thames Valley Police, on behalf of a rape victim v Metro (London)** (*Report 59, 2002*)

The newspaper had not sufficiently edited material supplied to it by a news agency before publishing a story about a rape victim, leading to details which could have identified her being published in the newspaper. The Commission made clear in its adjudication that it attaches extreme importance to the scrupulous manner in which reports about sex crimes should be constructed. It added that any details beyond the most basic — no matter how small — can identify a victim to someone who does not know of the crime to which that person has been subjected.

## PROTECTING PEOPLE AT TIMES OF GRIEF AND SHOCK

57. The Commission has long recognised that it is an unenviable but necessary part of a journalist's job to speak to the relatives of those who have died or been injured in newsworthy incidents. However, particularly given the heightened vulnerability of such relatives, the Code sets out strict rules about how information must be gathered and

published. The following summaries detail examples of where the Commission considered that a newspaper went too far.

58. **McKeown v Newcastle Evening Chronicle** (*Report 40, 1997*)

In a well-publicised landmark adjudication, the Commission upheld a complaint after a reporter effectively broke the news of the death of a man to his parents. They knew that he was missing but not that a body had been found and were still hoping that he would be found alive. The Commission made absolutely clear that it is not the function of newspapers — either through publication or through the questioning of reporters — to break news of a death to close relatives.

59. **Mulford v Dundee Courier and Advertiser** (*Report 41, 1998*)

The Commission underlined this point when adjudicating on a complaint about a reporter's behaviour. There was no complaint about a published piece. A journalist telephoned a man whose niece had just died in a car accident for a comment — even though the man was unaware of the accident, something that should have been known to the journalist. Breaches of this part of the Code have not happened since this case.

60. **Clement v South Yorkshire Times** (*Report 43, 1998*)

An enquiry at the home of the widow of a man who had just died in a car accident resulted in a breach of the Code because of the behaviour of the reporter. The Commission concluded that stepping into the property without permission did not show suitable sympathy and discretion at the time of grief and that unnecessary distress had been caused.

61. **Napuk and Gibson v FHM** (*Report 48, 1999*)

The complainants were the parents of two students — unknown to one another — who had committed suicide at university. The magazine had highlighted their cases in a flippant way in a student guide at the beginning of the university year. The complainants' children had died relatively recently and the Commission condemned a serious breach

of the Code where tragic deaths were treated in a gratuitously humorous manner.

## **INNOCENT RELATIVES AND FRIENDS**

62. One of the most common reasons why members of the public become involved in newspaper reports is that they are witnesses to or victims of crime. Details of such cases are woven into the different cases in the sections above. But there is another category of people who are also innocent — friends or relatives of those *accused* of crime. This Section outlines the Commission's findings in relation to a handful of complaints by such people.

63. **Beever v News of the World** (*Report 42, 1998*)

There was no public interest in exposing a police officer as the step-brother of a man accused of being a contract killer because, as the newspaper admitted, the complainant had no idea about his step-brother's activities.

64. **Lacey v Eastbourne Gazette** (*Report 44, 1998*)

A local newspaper should not have made a city councillor the focus of a story about the conviction of her son on drink driving charges, although there may have been some justification for mentioning her in the body of the article, because the story was about her son and not about her.

65. **Bibb v Weston and Somerset Mercury** (*Report 47, 1999*)

There was no public interest in identifying the father of a girl who had been expelled from school for taking drugs. In pursuing his public duties as a primary school governor the complainant had never made any reference to the drugs issue or had responsibility for such problems — and there was therefore no public interest in identifying him.



**66. A woman v Milton Keynes on Sunday** (*Report 48, 1999*)

An article about a local criminal who was renouncing his life of crime and moving to a new area included the name of the criminal's mother, and what she did for a living. There was no public interest in doing so, and neither was the relationship established in the public domain.

## **HARASSMENT**

67. It can often be overwhelming for those who are unexpectedly caught up in a story to have to deal with journalists who repeatedly ask for information. The PCC deals with most allegations of harassment by giving practical advice to complainants over the telephone about how to get rid of the journalists — and therefore it is actually quite rare for formal complaints of harassment to be brought as problems are quickly sorted out. Our website carries information about what to do in the event of harassment, and we operate an emergency 24-hour manned helpline which gives advice when the office is closed<sup>53</sup>. The following summaries of adjudications underline that the Commission will take a firm line when journalists are found to breach the strict terms of Clause 4.

**68. Kimble v Bucks Herald** (*Report 53, 2000*)

A couple who were grieving for the loss of their 16 year old daughter should not have been approached several times over a short period of time, just because the reporter was trying to meet a deadline. Common sense should have told the reporter that repeated approaches were not appropriate in the immediate aftermath of the tragedy.

**69. Swire v Mail on Sunday** (*Report 54, 2001*)

The father of a woman who was caught up in a news story complained to the Commission that, after having been asked to desist, a reporter and photographer from the newspaper turned up trying to interview his daughter. The Commission made clear that it will find a breach of the Code in such circumstances where there is no public interest:

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<sup>53</sup> See pp. 31 and 35

reporters must respect the wishes of the public if they are asked to desist from approaching or telephoning them.

### Conclusion

70. This survey - and the accompanying documentation in the Appendix — has set out a number of principles which guide the Commission in the application and interpretation of the Code. A number of conclusions can be drawn from this brief survey.
- Privacy is not an absolute right. It can be compromised by the actions of an individual - or intruded into in the public interest.
  - Privacy is not a commodity that can be sold on one person's terms. The Code - which mirrors the terms of the Human Rights Act - is not designed to protect commercial arrangements, and is at its strongest where it is safeguarding the rights to privacy of those who do most to protect themselves.
  - If a person sells material about his or her private life - or indeed talks about his or her private life in public - then they may limit their ability to complain and protect themselves in the future.
  - The protection of personal privacy does not extend to the taking of pictures in public places - or the protection of material that is about to enter the public domain.
  - Where children are concerned, the need for protection of privacy is greater - but is linked to whether or not a photograph or story impinges on the private life of a child in a way which might damage his or her welfare.
71. Against this background, the PCC will continue to adjudicate on whether or not the Code has been breached, taking into account not just the letter of the Code but the case law laid down by these adjudications.

### C (3) Privacy and public figures

1. Although the Select Committee's inquiry centres on the privacy of ordinary members of the public, and the PCC's service to them, it is sensible briefly to survey how the Commission deals with the issue of privacy and public figures. This is partly because — as the Commission has readily acknowledged — when the Select Committee (and indeed Calcutt) last scrutinised this area, the PCC's record was not strong. The Commission in its early years — particularly in relation to the exceptionally difficult circumstances of the break up of two Royal marriages and intense public interest in them — found it difficult to cope with these issues<sup>1</sup>. But much has changed with them, and the Commission believes it is now much more professional at handling complaints from high profile people — partly because it does so on the clear basis of equal treatment under the Code and equal service from the PCC.
2. This brief section sets out some of the issues involved in the handling of complaints from individuals who have a high profile — in most cases because of their fame, but in other cases because of their infamy.

#### The importance of equal protection under the Code

3. It is inevitable that public figures — those in the political, showbusiness, sporting and other worlds — will face different pressures from ordinary people. Their faces are familiar to the public (and members of the public, in turn, are often the ones who intrude into their privacy when they are out and about with requests for photos and autographs and so on). They often need to promote themselves — and sometimes an image of themselves — in the media as part of their professional life. They sometimes accept money for doing so. And, on occasion, they use their families as part of that. Each of those points means that people in the public eye have special needs.

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<sup>1</sup> See Professor Shannon, *A Press Free and Responsible* (2001); especially Chapters 4 and 7.

4. The Commission recognises that. For instance, in its adjudication on a complaint from former Coronation Street actress Jacqueline Pirie<sup>2</sup> - a good example of an actress required to seek publicity from time to time — the PCC noted that such work in a professional capacity does not undermine an individual s right to privacy:

First, the Commission has previously made clear that even when individuals do put matters concerning their private lives into the public domain - as public figures such as Ms Pirie are expected to do from time to time - the press cannot reasonably justify thereafter publishing articles on any subject concerning them (Report 49).

5. Indeed, the Commission has always made clear that public figures are entitled to the same protection for their privacy as ordinary people — the Code makes clear that everyone is entitled to respect for his or her private life — unless or until, as we set out later, individuals do something to compromise that right. This principle of equal treatment has been set out in a number of adjudications about the famous, and about the infamous (whose privacy the Commission is determined to protect, albeit at the cost of some unpopularity with the public, as much as anyone else s).
- The Pirie adjudication referred to above made clear that film and television celebrities are entitled to respect for their private lives — even though they sometimes have to appear in the media as part of their professional obligations. This ruling has been reinforced when the Commission has upheld complaints from other celebrities including Cilla Black (Report 55), JK Rowling (Report 56), Sir Elton John (Report 45) and Sir Paul McCartney (Report 43).
  - Public servants — including of course politicians — are also entitled to privacy, although their public role, and payment by the taxpayer, inevitably opens them up to an added degree of scrutiny. This was established in an important complaint on behalf of a police officer — WPC Moira Charters — about intrusion into her family life. The Commission ruled public servants are entitled to the same protection under the Code as anyone else (Report 48).

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<sup>2</sup> See also Section C2, p. 90

- Members of the Royal Family, too, who have their own difficult balancing act to conduct between public duties and private lives, are entitled to the full protection of the Code. This was clearly established in a complaint from Prince William about OK! Magazine (Report 52).
- Even those who are in the public eye because of their (or their spouse s) infamy have rights to privacy. The Commission clearly set out this doctrine in a ruling in January 2001 on a complaint from Ian Brady about the Liverpool Echo and others: The Code — in line with the Human Rights Act — confers rights to privacy on everyone, no matter how horrendous their crimes (Report 49). This doctrine has been underlined in subsequent rulings on complaints from Mrs Primrose Shipman — where the PCC upheld a complaint (Report 56) - and Miss Jane Andrews (ibid).

#### Equal treatment from the Commission

6. The other way in which the PCC now deals more effectively with issues relating to the privacy of high profile individuals is to ensure they have equal procedural treatment from the Commission. In its early years, the PCC was inclined to make statements about issues in the absence of formal complaint and investigation<sup>3</sup>. This undermined its authority — and also opened it to the charge that it operated a two-tier service.
7. Procedures for dealing with complaints from public figures were reviewed and tightened in 1995, so that the PCC would never make a statement in the absence of complaint and investigation. It has also, since then, sought rigidly to apply the same procedures to complaints from high profile individuals as it does to every other complaint — and to apply, similarly, the terms of the Charter.
8. This process was scrutinised by the Administrative Court in the action for judicial review brought by TV personality Anna Ford (see Section E6). In that case, the Commission s procedures, based on equality of treatment, were clearly endorsed by the Court.

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<sup>3</sup> See Professor Richard Shannon, *A Press Free and Responsible* (2001), Chapter 7 especially.

The public's view — different to that of the Commission

9. While the Code and the Commission confer equal treatment on high profile individuals, members of the public — ironically those who sometimes also register their disquiet about newspaper standards — take a somewhat different view which it is important to note.
10. These views have recently been ascertained in an important survey by Professor David Morrison and Michael Svennevig for the BBC and others<sup>4</sup>. One of the questions posed to focus group surveys of 1500 people was the extent to which different individuals had rights to privacy (Research Working Papers, Volume I, p.123 and following). A copy of the results is included in Appendix IX. In summary it found that:
  - 54% of people thought that children and patients with Alzheimer's disease should have full rights to privacy;
  - 48% believed victims of crime should have full rights — almost the same proportion as lottery winners (46%); whereas
  - only 16% thought Members of the Royal Family had full rights to privacy — while 18% thought they should have none or almost none;
  - just 6% thought politicians should have full privacy rights — while 40% thought they should have none or almost none; and
  - an overwhelming 77% thought drug dealers and rapists should have no rights to privacy at all<sup>5</sup>.
11. The conclusion the authors drew from that was that:

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<sup>4</sup> The Public Interest, The Media and Privacy (March 2002), for the BBC, the BSC, ICSTIS, the ITC, the IPPR and the Radio Authority.

<sup>5</sup> The Commission recognises that the Code applies to everyone, including prisoners. See *Andrews v The Mirror*, Report 56.

This division of people's rights according to their role and responsibilities was mirrored throughout all the subgroups within the overall sample. There was a widely shared consensus over what rights different people and different roles have in respect of privacy from the media. These findings closely mirrored those drawn from the focus groups, and indicated very clearly that there was a shared set of media treatment criteria — and associated limits — which most people were familiar with and accepted (p.124)

12. While noting public sentiment in this area, the PCC, rather unfashionably, disagrees with this — believing that everyone must start from the basis of equal rights to privacy. But the PCC has also always recognised that some individuals can undermine those rights to protection and to complaint.

#### Undermining rights to privacy

13. As is set out elsewhere, rights to privacy, although equal, can never be absolute. A range of factors — explored in more depth in Section C2 — impact on them. Where public figures are concerned the most obvious point is that some individuals can, by their own actions, compromise their rights to privacy. This is usually the result of either promoting a false image in the media or selling private information and pictures to newspapers or magazines. These points are examined in more detail elsewhere in this submission.
14. This common sense doctrine — that rights to privacy are not something that individuals can enjoy on their own terms, especially if they are role models — has received strong backing in a number of Court rulings. Specifically:
  - in the case of Gary Flitcroft and the Sunday People, the Court of Appeal ruled that whether you have courted publicity or not [role models in particular] may be a legitimate subject of attention. If you have courted public attention then you may have less ground to object to the intrusion that follows (A v B&C, para 11 — xii, Court of Appeal, 11<sup>th</sup> March 2002). The Court added that a public figure should recognise that because of his [sic] position he must expect and accept that his action will be more closely scrutinised by the media. Even trivial facts relating to a public figure can be of great

interest to readers. Conduct which in the case of a private individual would not be the appropriate subject of comment can be the proper subject of comment in the case of a public figure (ibid);

- in the case of Naomi Campbell the Court of Appeal added that one principle, which has been recognised by the parties in this case, is that where a public figure chooses to make untrue pronouncements about his or her private life, the press will normally be entitled to put the record straight (Naomi Campbell v MGN Limited, paras 42-43, Court of Appeal, 14<sup>th</sup> October 2002);
  - in a judgement about whether or not to grant TV presenter Jamie Theakston an injunction restraining publication of a story about various sexual matters concerning him, Mr Justice Ouseley ruled in the High Court that: Whilst [Theakston] may not be presented as a role model, nonetheless the very nature of his job as a TV presenter of programmes for the younger viewer means that he will be seen as somebody whose lifestyle, publicised as it is, is one which does not attract moral opprobrium and would at least be generally harmless if followed. It is insufficient to say that the newspaper could take this information to the BBC. The free press is not confined to the role of a confidential police force; it is entitled to communicate directly with the public for the public to reach its own conclusion (High Court, 14<sup>th</sup> February 2002, para 69).
15. A number of other factors may limit the rights of individuals who are, or have been, in the public eye. For instance, there will always be a good deal of material about public figures in the public domain — and information once there cannot be retrieved. Here the Code echoes the terms of the Human Rights Act and of important Strasbourg jurisprudence, and recognises that it is impossible to stop newspapers or magazines republishing material available to the public<sup>6</sup>. This point was underlined in the Commission's adjudication on a complaint from Mrs Renate John — about whom an article had been written in a Sunday newspaper despite the fact that she is *no longer* a public figure. In that adjudication the Commission ruled that:

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<sup>6</sup> - although the Commission does take a different view, on very rare occasions, where publicly available material may damage the welfare of particularly vulnerable groups. See *A woman v Hastings and St Leonards Observer* (Report 41).



The Commission accepts that a free press will from time to time write about people who have formerly been in the public eye and it is not the Commission's job either to restrict this right or to afford individuals a veto over future publicity, provided, of course, that newspapers abide by the terms of the Code in such reporting (Report 53).

16. In an important point in that adjudication about the difference between intrusion into privacy and unwanted publicity, the PCC added — in relation to details such as Mrs John's divorce and the village where she lives - that:

it could not uphold a complaint about the article when the objection appeared to be more to do with unwanted attention than the publication of truly intrusive details (ibid).

#### The families of public figures

17. One area where the PCC has been consistently strong and robust is the degree to which the families of public figures — especially their children — are entitled to the maximum protection of the Code, unless of course (in very rare circumstance) they themselves are famous in their own right. In the case of children, the Code itself is very explicit that where material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his or her parents or guardian (6v).
18. The Commission has underlined these principles on a number of occasions.
- With regard to children, the Commission upheld a complaint in 2001 from author J K Rowling about pictures of her daughter which had appeared in a magazine merely because, in the PCC's view, she was the daughter of someone in the public eye (Report 56)<sup>7</sup>.
  - These points were echoed in a complaint from the Prime Minister and Mrs Blair about articles in two national newspapers regarding their son Euan's education. The PCC ruled that:

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<sup>7</sup> See also Section C2, p. 96

It wanted to underline in this adjudication that the acid test that any newspaper should apply in writing about the children of public figures who - like the Prime Minister and Mrs Blair's children, and unlike the Royal Princes - are not famous in their own right is whether a newspaper would write such a story if it was about an ordinary person. Academic achievement or successful entrance to a University might well fall into such a category; private choices about the nature of such an application, or indeed private details about an individual's time at university, would not. The children of public figures like the Prime Minister are clearly not public figures in their own right - but of interest to the public only because of the position of their parents. The Commission considers that they should continue to benefit - like the families of all public figures - from the full and strong protection contained in the letter and spirit of Clause 6 of the Code (Report 57).

- The Commission extends such protection to families as well — and underlined that point in an important ruling in 1998 on a complaint from Mr Paul Burrell. In complaining about an article in a Sunday newspaper, Mr Burrell accepted that he was a public figure — albeit at that stage unwillingly — but that his family should be protected. The PCC ruled that it could not accept it as axiomatic that the family life of those involved in charities was a legitimate subject of newspaper scrutiny. Indeed, the families of those involved in charity work have as much right to respect for their private lives as any other (Report 42).
- More recently, the Commission has emphasised its doctrine of proportionality in regard to families who have received some previous legitimate coverage — but then find themselves the subject of subsequent more intrusive reporting. In partially upholding a complaint from Mr Bernie Ecclestone about coverage of his daughter Tamara, the PCC ruled that: while it noted that Miss Ecclestone had received publicity in the past on account of her lifestyle as the daughter of a very wealthy man, the Commission made clear that the previous publication of matters into the public domain dealing

with a person's private life does not necessarily disentitle that person to any right of privacy<sup>8</sup> (Report 60).

### The Royal Princes

19. A great deal has been written about Princes William and Harry and respect for their privacy. We do not intend to chronicle it again here, except to highlight a number of points — principally that:
- that the PCC has always expected the Princes to have the same rights to privacy as other children during their education — no more and no less. There has never been any question of special treatment or the application of different, more stringent rules;
  - complaints from, or on behalf of, the Princes (and indeed other members of the Royal Family) are dealt with in the same procedural manner as all other complaints;
  - we have always been as much concerned about the privacy of other pupils and students at the various educational establishments Princes William and Harry have attended, as about their privacy<sup>9</sup>.
20. Indeed, it was in relation to this third point that the Commission put considerable effort into liaising with the University authorities and the Students Union at St Andrews in the summer of 2001 to ensure that fellow students of Prince William at University — who would clearly not be public figures in their own right — knew about the terms of the Code and the process for bringing complaints under it. Apart from the provision of specific information, a seminar was held for 400 students under the auspices of the then Rector, Andrew Neil.

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<sup>8</sup> *Ecclestone v Mail on Sunday, Report 60*. This is the doctrine first expounded in *Pirie (Report 49)* and see Section C2.

<sup>9</sup> Further information on all these points can be found in two speeches of Lord Wakeham, which set out the basic principles, based on the Code, relating to reporting of Prince William and Harry during their time at school and university. The first was at the St Bride's Institute on 23<sup>rd</sup> August 1995; the second at the same location on 28<sup>th</sup> June 2000. See also *Prince William, Prince Harry and the Code*, 29<sup>th</sup> April 1999, on the issue of cumulative intrusion.

21. The Commission is satisfied that the arrangements covering the privacy of Princes William and Prince Harry continue to work well — and that newspapers and magazines are to be commended on their continuing restraint, which indeed they show to other children as well, in this area. The PCC is also pleased that the privacy of other students at St Andrews — as was the case at Eton — has clearly been respected. In this area — the privacy of ordinary students — the PCC will continue to be especially vigilant.
22. Finally, on a point of interest, the Commission has received a number of representations from other Governments via their Embassies (for instance Norway) about how this difficult balancing act has been managed — and has been pleased to advise on the relatively successful formula deployed here.

### Conclusion

23. The Commission continues to acknowledge that while individuals in the public eye are entitled to the same respect for their privacy as anyone else — unless or until they do something to compromise it — there are of course special sets of circumstances that relate to their relationship with the media.
24. The PCC will continue to balance all these factors in its adjudications — strengthened, as they are, by the added authority and weight lent to the Commission's common sense approach by recent High Court judgements.

## C (4) The public interest

### Definitions

1. Nobody has — unsurprisingly - ever succeeded in producing a comprehensive definition of what constitutes the public interest. It is futile to try: the public interest will incorporate too many things — and mean too many different things to different people — for any definition to be practical or meaningful.
2. The industry's Code of Practice seeks simply to give some illustrations of what constitutes the public interest. It includes:
  - detecting or exposing crime, or serious misdemeanour;
  - protecting public health and safety; and
  - preventing the public from being misled by some statement or action of an individual or organisation.

The Code, drawing in effect from the Human Rights Act, adds that there is a public interest in freedom of expression itself — one impact of which is that the Commission must have regard to the extent to which material has, or is about to, become available to the public.

3. It is important to note — before looking at the public interest in more detail — that not every Clause in the Code has such an exemption to it. Some Clauses are absolute and allow for no defence of public interest in view of their importance in the protection of ordinary people. They include: accuracy and opportunity to reply; intrusion into grief and shock; identification of victims of sexual assault; discrimination; and financial journalism.
4. The PCC has always sought to judge the concept of public interest on a case by case basis — and this is dealt with more fully below. But one thing it has always been clear about is that there is a clear distinction between public interest and what interests the public. The two — from the point of view of PCC rulings — are quite different.
5. The Courts, in looking at this area since the introduction of the HRA, have taken a somewhat different and more liberal view than the

Commission. In particular, in the successful appeal by Mirror Group Newspapers against the injunction granted to footballer Gary Flitcroft restraining publication of various sexual stories about him, the Court of Appeal under Lord Woolf ruled that:

In many of these situations it would be overstating the case to say that there is a public interest in the information being published. It would be more accurate to say that the public have an understandable and so legitimate interest in being told the information. The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, there will be fewer newspapers published which will not be in the public interest (A v B&C, para 11 — xii, Court of Appeal, 1<sup>st</sup> March 2002).

6. The Commission recognises the force of this logic, but continues to make clear that it will apply a much tighter definition of public interest when adjudicating on possible breaches of the Code.

#### Tests

7. Because of the difficulty of defining public interest, the former Chairman of the PCC, Lord Wakeham, sought to establish a number of tests that the Commission would apply in scrutinising the public interest defence deployed by newspapers<sup>10</sup>.
8. He identified seven of them, as follows:
  - is there a genuine public interest involved in an intrusion, or is this just something which interests the public?;
  - if there is a public interest, are there ways to disclose it which minimise the necessary intrusion?;
  - are intrusive photographs which form part of the story necessary to prove the story, or simply to illustrate it?<sup>11</sup>;

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<sup>10</sup> Speech to the Michael Page Group, London, 21<sup>st</sup> November 1996.

<sup>11</sup> This is also an issue the Court of Appeal dealt with in the appeal of Naomi Campbell v Mirror Group Newspapers.

- is there a way to minimise the impact on the innocent and vulnerable relative of the individual at the centre of any necessary intrusion, in particular children?;
  - in any story about someone connected with a public figure designed to illustrate a point about that public figure, is there a genuine public interest in the connection, or is the relationship actually too remote?;
  - where a story relates to past actions or statements of an individual that are at odds with his or her current behaviour, was the original statement or action recent enough to justify publication?; and
  - in any story published about an individual where there used to be a public interest, have these tests been applied afresh in case such a defence no longer applies?
9. Against this background, this Section sets out how the Commission has applied its scrutiny to editors' public interest defences in practice, applying these tests where appropriate.

#### EXPOSING CRIME

10. Exposing crime and serious misdemeanour is obviously something which serves the public interest — and is indeed an important role of many campaigning newspapers, not just nationally but locally as well. The PCC has consistently backed newspapers who have been involved in rooting out wrongdoing — for instance in cases where:
- a Sunday newspaper exposed a murder plot in a case where an individual had offered a reporter money to kill his mistress (*Khare v News of the World, Report 48*). In an important example of the use of the public interest tests, the Commission ruled that the use of a private photo was an essential illustration to the story; and
  - a Scottish newspaper mounted a sting operation to uncover the activities of a convicted art thief who had started running his own antique shop (*Thomson v Sunday Mail, Report 45*).

#### PROTECTING PUBLIC HEALTH AND SAFETY

11. Another leg of the Code's public interest defence is protecting public health and safety. Cases where the Commission has backed newspapers include:
- a newspaper that exposed how a felon convicted on assault and possession of weapons charges had been transferred to a non-secure unit in a hospital. The newspaper — passing one of the seven tests — published a picture of him taken in private grounds to prove that he was being left unsupervised (*Fielden v The Sun, Report 53*);
  - a London newspaper which reported how a dying man had been dragged from A&E by nurses. The information was only exposed when a reporter deployed subterfuge to look at CCTV records in the hospital, by posing — with the consent of the dead man's relatives — as a member of the family (*Northwick Park Hospital v Evening Standard, Report 57*);
  - the same London newspaper which reported how a London Borough Council warned one of its members not to use a social worker who was a paedophile — while keeping the dangers secret from the public. Identification of the Councillor was necessary in the public interest (*Robson v Evening Standard, Report 42*).
12. However, there are some cases where the Commission has judged such a defence not to be applicable — particularly where children are concerned.
- One local newspaper named a child who had been admitted to hospital with meningitis. His school had already informed other parents and given them health guidance, and the Commission ruled that there was therefore no public interest in revealing details of the child's health as it was not essential for public safety (*King v Reading Evening Post, Report 37*). This also failed one of the public interest tests — about whether there were ways to disclose the story while minimising an intrusion into privacy: a story could have been written about a boy at school with meningitis without naming him<sup>12</sup>.

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<sup>12</sup> See also *A couple v Aberdeen Press and Journal, Report 56*.



## EXPOSING HYPOCRISY

13. The third leg of the public interest examples in the Code relates to the exposure of hypocrisy where statements or actions of an individual or organisation would mislead the public. Such cases where the PCC has backed a public interest defence include:
- a national newspaper revealing that an MP was having a relationship with a woman in London, at the same time as presenting a different image — that of a happily married man — in his constituency (*Allason MP v The Mirror, Report 37*); and
  - a Sunday newspaper article about a school governor — who was ultimately responsible for school discipline in a school with a strict policy on violence — indulging in sex and fighting sessions with mothers of two of the pupils banned from the school for fighting (*Malcolm-Walker v News of the World, Report 36*). This also passed one of the tests that it was fair to make a comparison between private behaviour and public responsibility.

## PUBLIC POLICY AND PRIVACY

14. Another role of newspapers and magazines is to expose public concern about matters of public policy and debate. On occasion, they will need to illustrate such concerns with examples that may intrude into an individual's privacy. Relevant cases include:
- a number of Scottish newspapers who used the example of a gay couple in Edinburgh to highlight public debate about the twin issues of surrogacy and homosexual parenting. The Commission ruled that there was public interest in these matters, and it was necessary to identify the individuals concerned to illustrate the matter — particularly as the surrogate mother had given an interview about the story (*Zachs v The Glasgow Herald and others, Report 38*)<sup>13</sup>;
  - a national newspaper which published photographs taken of a brain damaged woman lying in a coma in hospital — with the permission of her parents but without the permission of the hospital, which

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<sup>13</sup> See also *Tonner v News of the World, Report 60*, and Section C2, p. 95

subsequently complained — following an attack by an individual who had been given what many people regarded as too lenient a sentence. The photo was necessary to illustrate this story and highlight public concerns about sentencing (*Taunton and Somerset NHS Trust v The Mirror, Report 54*); and

- a local newspaper and other newspapers who published pictures of serial killer Ian Brady being driven from Ashworth to a local hospital for medical treatment. The Commission recognised that while Brady had rights to privacy<sup>14</sup>, there was a legitimate public interest in his campaign to starve himself to death (*Stewart-Brady v Liverpool Echo and others, Report 49*). Again, the newspapers passed the test that a picture — of an emaciated Brady — was essential to illustrate the story.

## THE PUBLIC'S RIGHT TO INFORMATION

15. Although not on an issue of privacy, the Commission has from time to time had to make judgements about whether payments to criminals and their families reveal a public interest.
16. In the case of the serialisation by The Times of Gitta Sereny's book about Mary Bell, the Commission ruled in an important adjudication — which also dealt with a number of other payments to different criminals — that payment was in the public interest because it ensured important information was made widely available. If there had been no serialisation it would have meant that the material in the books would not have been made available to a wide public audience. The public would have been deprived of information that was in the public interest (*Report 43*).
17. However, the Commission also ruled that there was no public interest in an article by Victoria Aitken about her father's crimes. The article contained no information which the public needed to know and merely served to glorify Jonathan Aitken in a way which breached the terms of the Code (*Barlow v The Daily Telegraph, Report 47*).

## PROTECTING PRIVATE LIVES

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<sup>14</sup> See Section C3, p. 109

18. There are also occasions when newspapers or magazines reveal material about the private lives of individuals and stories where no public interest is served, and the Commission will in those circumstances censure the newspaper. The following cases are good examples<sup>15</sup>:

- a Scottish newspaper reported how two individuals involved in healthcare — one a doctor and the other a lawyer specialising in medical negligence - had had a baby after leaving their respective partners. The Commission ruled that their personal lives had no bearing on their public role — and there was therefore no public interest in the revelation (*Greer / Sutherland v Sunday Mail, Report 41*); and
- another Scottish newspaper reported the story of an individual whose wife had had an affair with a WPC. The Commission ruled that public servants, like the WPC, had rights to privacy — and in this case there was no inherent public interest to over-ride it (*Charters v The Scottish Sun, Report 48*).

#### KEEPING HEALTH ISSUES PRIVATE

19. One of the areas in which the Commission has been consistently firm centres on the privacy of an individual's health and medical records. The public interest in revealing such details needs to be incredibly strong. The following cases illustrate those that did not pass such a stiff test:

- a national newspaper reported how the nephew of a Cabinet Minister was dying of AIDS. The Commission ruled that there was no public interest involved in intruding into the confidential affairs of a private citizen, or his family's grief, simply because one of his relatives was a well known public figure (*Lilley v Daily Mirror, Report 29*); and

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<sup>15</sup> - but see also *Wenman v The Sun, Report 22* about wife swapping and *Martin v Take a Break Report 39* about relationships in prison.

- a national newspaper identified a 15-year-old girl as suffering from CJD. The Commission ruled that while there was public interest in the illness, there was no need on this occasion to identify a particular individual (*Rutherford v Daily Express, Report 37*)<sup>16</sup>.

## PROTECTING CHILDREN: THE EXCEPTIONAL PUBLIC INTEREST

20. As is set out elsewhere in this submission, the protection of vulnerable groups of people is one of the cornerstones of the Code and the work of the PCC. In 1997 the Code Committee recognised, in this context, the particular problems that arise from the coverage of children in newspapers and magazines — and amended the Code to ensure that:

in cases involving children, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

21. This sets a very high threshold at which editors can write about the private lives of children (see also Section C6 for a summary of issues relating to children). To date, the Commission has never yet accepted an extreme public interest justification for intrusion into the private life of a child from any publication — which underlines the tough nature of the Code and the importance the PCC attaches to it. The following cases include some examples of public interest defences we have rejected:

- a local newspaper identified five boys expelled from school for fighting and racial abuse. The Commission noted that there was of course public interest in the issue of racism in schools, but believed there was no extraordinary public interest in identifying the individuals, particularly at a stage when the allegations had not been proven (*Colgan v Manchester Evening News, Report 43*);
- a national newspaper reported allegations that the daughter of the Prime Minister was receiving special treatment in obtaining a place at the local school. The Commission said that there was no extraordinary public interest in making Kathryn Blair the centre of

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<sup>16</sup> See also *Anon v Northern Echo and Darlington and Stockport Times, Report 53*.

the story, particularly as no misdemeanour had been proven (*Blair MP v Mail on Sunday, Report 47*); and

- a local newspaper identified a 16-year-old girl whose mother had committed suicide. The Commission ruled that there was no exceptional public interest in naming the girl, particularly at a time when she was sitting her GCSEs and publicity could interrupt her schooling at an important time in her life (*Brown v Salisbury Journal, Report 46*).

## C (5) Privacy and the Human Rights Act 1998

### Background

1. During the passage through Parliament of the Human Rights Bill in 1997/8, the Press Complaints Commission, and the newspaper industry, voiced serious concerns about the possible impact of the legislation both on self-regulation and on freedom of expression.
2. The former PCC Chairman, Lord Wakeham, said that his main concern was the likely impact on ordinary people:

It [the legislation] would be highly damaging to ordinary people — in other words, the great majority of those who from time to time are affected by media intrusion — leaving them without the protection of self-regulation. If there is a law of privacy, fashioned by the Courts, I fear that newspapers will simply say to complainants: Use it. That will be fine for the rich and the powerful, but it will be a remedy out of the reach of ordinary people. [Furthermore] if the PCC's adjudications on matters of privacy could be subject to subsequent action by the courts, our task in seeking to resolve differences, to obtain a public apology where appropriate or, if necessary, to deliver a reprimand to an erring editor would no longer be a practical proposition (House of Lords, 24<sup>th</sup> November 1997).

3. The Government — with cross party support — listened to those concerns and amended the Bill. The amendment on Freedom of Expression subsequently became Clause 12 of the Human Rights Act 1998 (HRA). The amendment dealt with the problems of possible interlocutory injunctions under the Act, safeguarded the position of self-regulation by including compliance with the Code in the legislation, and imbued the legislation with the culture of Strasbourg jurisprudence (both on press freedom and on material in the public domain) by directing Courts to have special regard to the Convention right on freedom of expression. In other words, the Government was seeking to ensure that the Act did not become a privacy law by the back door.

The development of the HRA since then

4. The Act itself has proved to be controversial in many ways — although it has to be said that the controversy has been based far more on myth than reality. In fact the HRA has developed in the way Parliament, when incorporating the Convention safeguarded by Clause 12, hoped. The facts are that:
  - \* no Court has yet said that the Act creates a privacy law, a myth which arises from the unsupported comments of just one of the three judges sitting in the case of Michael Douglas, Catherine Zeta-Jones and Hello! magazine;
  - \* fewer than twelve cases relating to privacy and the press have in fact gone to Court in the more than two years since the Act's implementation in October 2000 — a very small number that underlines the fact that actions under the legislation have proved cumbersome, inaccessible and practically useless for ordinary people. Indeed, none of them have been from ordinary people;
  - \* there is no evidence of individuals — whether in or out of the public eye — bypassing the PCC and going straight to Court. In the months since the implementation of the Act the number of privacy complaints coming to the Commission has gone up, and have in the last two years reached record numbers (see C1), dwarfing actions brought under the Act;
  - \* there is no two-tier system of redress on privacy issues — public figures are still coming to the PCC along with the vast majority of complainants who are **not** people in the public eye — contrary to what some commentators have maintained.
5. A number of important legal rulings have underlined how right the PCC and editors were to be concerned about the potential impact of the Act — but they have also served to give real teeth to Clause 12 of the Human Rights Act, which enshrined the importance of freedom of expression.
6. The first important judgement — in which the PCC was directly involved — was the judicial review sought by Anna Ford of the

Commission's decision in her complaint against *The Daily Mail* and *OK! Magazine*<sup>17</sup>. That judicial review — only the second in the PCC's eleven year history — was the first case to come to Court following the implementation of the Act. Her action — like that of Moors Murderer Ian Stewart-Brady before her — failed<sup>18</sup>. In a crucial ruling, Mr Justice Silber said that:

The type of balancing operation [between privacy and freedom of expression] conducted by a specialist body, such as the Commission, is still regarded as a field of activity to which the courts should and will defer. The Commission is a body whose membership and expertise makes it much better equipped than the courts to resolve the difficult exercise of balancing the conflicting rights [of] privacy and of the newspapers to publish (High Court of Justice, Queen's Bench Division, 31<sup>st</sup> July 2001).

7. The second important ruling was that of the Court of Appeal, under the Lord Chief Justice Lord Woolf, in the case of *A v B&C* — or, as was subsequently revealed, the footballer Gary Flitcroft and the *Sunday People*. In overturning an injunction which had been granted to the footballer by Mr Justice Jack restraining publication of an article about him, the Court of Appeal ruled that publication should go ahead. The ruling — repeating in effect PCC jurisprudence — underlined that celebrities who court publicity may compromise their rights to privacy. The Court said that:

Whether you have courted publicity or not you may be a legitimate subject of public attention. If you have courted public attention then you may have less ground to object to the intrusion which follows (Court of Appeal ruling, para. 11 — xii, 11<sup>th</sup> March 2001).<sup>19</sup>

8. The ruling also made clear — echoing that of Mr Justice Silber - that the Court preferred that matters of detail relating to privacy be dealt with not by the Courts but by the PCC and, ultimately, by readers. In a section of the ruling relating to the substance of the Flitcroft case, the Court of Appeal said:

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<sup>17</sup> *Ford v Daily Mail and OK! Magazine, Report 52*

<sup>18</sup> For further details, see Section E6 on Brady, Ford and judicial review.

<sup>19</sup> See also Section C3, p. 111



Once it is accepted that freedom of the press should prevail, then the form of reporting in the press is not a matter for the courts but for the Press Complaints Commission and the customers of the newspaper concerned (ibid, para. 48).

8. In the case of Naomi Campbell, the High Court did not make any finding relating to Ms Campbell's privacy after she withdrew her action — instead ruling in her favour to the tune of just £3,500 in relation to breach of confidence and the Data Protection Act. The Court, however, found that the newspaper had acted lawfully in revealing that she had not told the truth about her drugs problem and the fact that she was having therapy.
9. The newspaper appealed against the ruling on the issue of the Data Protection Act, and the award of damages, and their case was strongly upheld in the Court of Appeal. It ruled that:

the Courts must have regard to the importance of freedom of expression, particularly where it is the media that seeks to exercise that freedom. The Strasbourg Court has repeatedly recognised that freedom of the media is a bastion of any democratic society and Section 12 (4) of the Human Rights Act reflects the same appreciation . One principle, which has been recognised by the parties in this case, is that where a public figure chooses to make untrue pronouncements about his or her private life, the press will normally be entitled to put the record straight (Naomi Campbell v MGN Limited, paras 42-43, Court of Appeal, 14<sup>th</sup> October 2002).
10. This ruling chimed clearly with earlier related judgements — in the cases of Anna Ford and Gary Flitcroft detailed here, as well as one in the case of TV presenter Jamie Theakston<sup>20</sup> — in buttressing the position of the PCC and of self-regulation.
11. There are a number of implications which the PCC can draw from these cases that:
  - there exists no law of privacy in the United Kingdom;

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<sup>20</sup> See Section C3, p. 112

- injunctions on matters relating to privacy under the guise of confidentiality should — as indeed the Government indicated at the time it established Clause 12 of the Human Rights Act (relating to *ex parte* injunctions) — now be extremely difficult to obtain;
  - it is for the Courts to intervene only where the PCC has demonstrably failed in its task of balancing rights of individual privacy with freedom of expression. The PCC — which should in effect be the first port of call for aggrieved individuals - does not need to change its approach to privacy complaints;
  - the public interest should be interpreted liberally — not to include everything that interests the public (which the PCC has always made clear is **not** an appropriate definition), but not exclusively relating to matters such as crime and public health either; and
  - the Code, and editorial adherence to it, remain crucial.
12. Furthermore, it is important to note that, particularly in the case of Naomi Campbell, the Court was lending great weight and authority to the PCC's own jurisprudence on privacy — namely that celebrities who court privacy (often for payment) compromise and undermine their own rights when further, less welcome, private material about them is published. That serves to underline the importance of the Code and the PCC's rulings in this area.

### C (6) Children

1. Various parts of this submission deal with issues relating to the protection of children — and it seemed useful, therefore, simply to summarise them here for ease of reference.
2. The Commission places care for the vulnerable — which is very much at the heart of the editors Code — at the top of its list of priorities. And among all categories of vulnerable people, children are in many ways paramount: they typify the types of individual least able to protect themselves from media intrusion or harassment.
3. The Code recognises this with tough rules:
  - on photographs of children that impact on their welfare;
  - enabling children to complete their time at school free from intrusion;
  - preventing interviews or photographs of children at school without permission of the school authorities;
  - prohibiting payments to minors, or their parents / guardians, for material involving the welfare of other children;
  - stopping the publication of stories about children just because of the fame of their parents;
  - on the treatment of children who are witnesses to, or victims of, crime; and
  - to stop the jigsaw identification of those children tragically involved in sex cases (designed in co-ordination with the broadcast regulators).
4. In addition the Code allows for public interest exemptions only in cases where there is an exceptional public interest to over-ride the normally paramount interests of the child. As set out on page 124, the Commission has yet to find a public interest defence put forward by an editor sufficiently convincing to reject a complaint of intrusion into a child s privacy.

5. To buttress these Code stipulations, the Commission has issued a number of very important adjudications in this area — set out in more detail in Section C2 — which underline, among other things, the clear right to privacy of the children of public figures.
6. The Commission is pleased to note the very small number of complaints it receives relating to key parts of the Code — payments to minors, stories about the children of public figures, child witnesses to and victims of crime, and the identification of children in sex cases. This testifies to the significantly improved standards of reporting in this area over the years. The PCC has never actually had to censure a newspaper for a payment to a minor, for instance, and has only ruled on one case involving a child witness to a crime in the four years since it was incorporated into the Code. No complaint of jigsaw identifications has been upheld for six years.
7. The Commission is keen to ensure that schools and others involved in the care of children know about the Code and how to complain. Section D2 sets out some of our initiatives in this area. One of the members of the Commission with significant experience of schools and teaching is most helpful in co-ordinating some of this work.
8. The Code Committee will also be pleased to receive any further suggestions from members of the public and organisations involved in child welfare about how the Code might need to develop in this area. Such co-operation is extremely useful: indeed, some of the significant changes to the Code relating to children in 1998 followed discussions with the NSPCC and other similar bodies.

**SECTION D**  
**PUBLIC INFORMATION**



## **D (1) Our proactive public information strategy**

### Accessibility is the key

1. One of the keys to *any* system of regulation is that its existence and services are well known to those who might want to complain. Accessibility, openness and transparency are the keys both to public confidence and to the protection of the public. Even the most efficient of regulatory bodies is useless if its existence is a secret.
2. This point was registered in the 1995 White Paper on Privacy and Media Intrusion which urged the PCC to: consider improvements to your publicity arrangements . [Initiatives] to publicise the achievements of the Commission might be combined with efforts to publicise its powers and remedies (Privacy and Media Intrusion, Cmnd. 2918, July 1995, p. 33). Even before that White Paper, the PCC had put in place many measures to ensure our service is easy to use and accessible to ordinary people. It had also put in place a proactive public information strategy to make sure it maintains a presence throughout the regions of the country, and highlights its service to those who might have particular need to complain.

### The PCC s strategy

3. The Commission has, since 1996, built extensively on that programme, with a number of aims in mind. We have sought to ensure that:
  - we target those groups of people most likely to need to complain — and in particular the most vulnerable groups in society;
  - we maintain a strong presence around the countries and regions of the United Kingdom;
  - we play our full part in training tomorrow s journalists — on whom the future of strong, independent self-regulation will depend — in the strictures of the Code and the work of the Commission; and
  - we respond swiftly to requests for information and presentations about our work from the industry, from professional and other civic groups and from interested organisations.

4. Mindful, in particular, of the Select Committee's scrutiny of the impact of media intrusion on ordinary people, many of whom will find any complaints process daunting, this Section outlines in detail how we have sought to meet each of these aims, how they have been resourced, and our plans to continue them in the medium term.

#### Research into public opinion

5. Partly to measure how successful the PCC's strategy has been to date, and partly to assess how we might most effectively deploy resources in the future, the PCC commissioned some opinion research in January 2003 to look at:
  - public knowledge about the Commission;
  - the problem of media intrusion; and
  - what members of the public expect of a body like the PCC.
6. The full results of this poll conducted by MORI among a representative sample of 2,058 adults aged 15 and over in the United Kingdom between 23<sup>rd</sup> and 27<sup>th</sup> January are set out in Appendix X.
7. They underline three key facts — that :
  - very few people have themselves been personally affected by breaches of newspaper ethics;
  - despite which, the Commission is a widely recognised name with significant numbers of people knowing of its existence; and
  - the public believes the key characteristics of a newspaper complaints system are that it should seek quickly to resolve disputes, and that this service should be free to the public, paid for by the newspaper industry. That is, of course, exactly what the PCC delivers.
8. Numbers affected by inaccurate or intrusive reporting. The poll asked whether individuals themselves had ever had cause to register an official complaint about an article or programme that related to them personally.
  - The overwhelming majority — 93% - had never had cause to complain.
  - Only 4% had ever had cause to complain about a newspaper or magazine article, while 3% had about a radio or TV programme.



9. Name recognition of regulatory authorities. The representative sample was also asked what it knew about different media regulatory bodies. The survey suggested that there was a high name recognition for the Press Complaints Commission.
  - 80% of the sample had heard of the PCC. 14% knew a lot or a fair amount about it, 33% knew a little, while the remainder knew little but had heard of the organisation. Given how many people are directly affected by media intrusion (see para 8), this is an encouraging result.
  - By way of comparison, just 23% had ever heard of the telephone chat line regulator ICSTIS, and only 54% had heard of the Radio Authority. Name recognition for the Broadcasting Standards Commission was very similar to the results for the PCC.
10. Running a complaints system. Individuals were asked a number of questions about the service of the PCC and what they expect from a complaints handling system.
  - Questioned about the most important characteristic of a media complaints organisation, 52% replied quick resolution to complaints with 40% adding that it should be free.
  - Asked specifically on who should fund the Press Complaints Commission, the overwhelming majority — 64% - said the newspaper and magazine industry. Only 12% thought it should be paid for by taxpayers — the statutory option — while 7% thought it should be funded by a levy on complainants.
11. The PCC notes these findings, in particular the fact that the public seems to support the basic characteristics of a self regulatory system with speed at its heart, and that people are by and large aware of the PCC s existence. But there is always more to do. We will therefore use these results to target our information work even more effectively, and to act as a benchmark for further improvements.

D (2) Raising the profile: targeting particularly vulnerable groups of people — and enabling them to complain

1. The Commission recognises that some members of society are more likely to feature in newspaper and magazine articles because of national or international events, or because they are part of minority groups about whom there is curiosity or even ignorance. Moreover, vulnerable people may feel intimidated about taking on a newspaper by complaining, even if they have a legitimate complaint. But the protection of the vulnerable is crucial to our work - and it is important in these circumstances for the Commission to ensure that, in case things do go wrong, these groups are aware of the Code and enabled to complain. This Section outlines this part of the Commission's public information strategy, including which groups are targeted for special advice and what the Commission does to help them. We also set out how we complement this work with key adjudications on complaints.

#### **Those affected by coverage of refugee and asylum issues**

2. Newspaper scrutiny of such issues is intense, and coverage voluminous. Where newspapers highlight individual cases the people concerned can be particularly vulnerable. Not only is there the fear —based on reality or otherwise — that critical coverage might provoke hostility against them, but there is also the problem that asylum seekers might well not have the language skills to be able to complain about the coverage.
3. The Commission therefore embarked in 1998 on a strategy to make sure that representatives of asylum seekers had as much knowledge as possible about how to deal with the media and, if necessary, complain. In particular, the Commission has:
  - contacted and visited regional Refugee Councils and maintained close links with them;
  - engaged in dialogue with the National Coalition of anti-Deportation Campaigns;
  - participated in the Refugees, Asylum and the Media (RAM) forum;

- liaised with local authorities — such as in the Midlands, in Scotland and on the South Coast — which have a high concentration of asylum seekers in their boroughs;
  - translated the Code into a range of suitable languages to make the complaints process easier<sup>21</sup>
4. In addition to underlining the importance of making complaints to the process of raising standards, the dialogue with these groups has also helped the Commission to appreciate the range of issues involved.
  5. The Commission has entertained a number of complaints from the representatives of asylum seekers. Section B3 sets out how newspaper standards can be raised through the issuing of adjudications. To that end, the Commission has made a number of key adjudications aimed at improving the coverage of such matters. These include:
    - *Kenewa v Sunday Mercury, Report 50*. The Commission made clear that although a local newspaper was entitled to report on a local authority's policies towards housing asylum seekers, it must not be to the detriment of the children of the family at the centre of the article. It concluded that as the subject of the article was clearly very sensitive and likely to provoke a strong reaction in some people the newspaper should have taken more care to protect the privacy of the children.
    - *Harman and Harman v Folkestone Herald, Report 47*. The newspaper was criticised for using a photograph out of context to imply that police in riot gear had raided a house where some refugees lived. In an important adjudication the Commission took the opportunity to remind editors of their responsibilities in covering such topics and of the danger that inaccurate or misleading reporting may generate an atmosphere of fear and hostility which is not borne out by the facts.
    - *A reader v Daily Express, Report 56*. The Commission took the opportunity of this complaint about a comment piece to issue guidance to editors to the effect that editors must make sure that

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<sup>21</sup> See p. 32

material is accurate and that comment is distinguished as such; that there is no discrimination on the grounds of race or religion against a named individual; and that when disputes of fact do arise a fair opportunity to reply is given.

6. It is clear that many of the objections to reporting on asylum matters relate to accuracy, rather than, as is widely believed, discrimination. Newspapers have a valuable role in educating members of the public about this subject and, given the potential impact of inaccurate reporting in this volatile area, it is essential that complaints are forthcoming whenever a significant inaccuracy in reporting is spotted. To this end, the Commission has pledged to continue its ongoing programme of liaising with asylum groups to ensure that the disadvantaged status of those who they represent is not a barrier to their right to complain. This issue is further discussed in Annex 3.

## Race

7. The number of communities and individuals affected by all aspects of the reporting of racial issues is potentially overwhelming. Despite this, the Commission has made meaningful contact with key organisations to ensure that we are aware of the media issues most important to the communities they represent and that awareness of the Commission's service is tirelessly promoted.
8. Those groups with whom we have been in contact recently include:
  - the Creative Collective;
  - the Ethnic Media Group;
  - Commission for Racial Equality;
  - Race Equality seminar.
9. As the Commission is primarily a dispute resolution service, its success in regulating media coverage of issues relating to racial concerns is measured in no small part by the complaints that have been resolved. Recent examples include:
  - \* complaints against four national and regional newspapers from the parents of a boy from an ethnic minority who was identified as

suffering from suspected tuberculosis. The newspapers explained why the child was identified and apologised for any distress caused;

- \* a woman from Exeter who complained that an article and accompanying editorial had contained inaccurate and pejorative references to her degree course. The editor apologised for any offence caused to the complainant and invited her to submit a letter for publication;
  - \* a Councillor's complaint on behalf of a constituent about the inaccurate reporting of a charge of aggravated racial harassment. The newspaper published a full correction and apology alongside a photograph of the complainant.
10. The PCC also liaises with the CRE on a regular basis and former Chairman Lord Wakeham presented a keynote speech on the media and race at the CRE's Race in the Media Awards in 1996. Meetings have also been held with the Home Secretary's Race Relations Forum.
  11. We recognise there is still much to do and further initiatives are planned for 2003, including:
    - attendance at a Chinese in Britain Forum conference in Birmingham in February;
    - publication of an article in the Chinese in Britain Forum newsletter;
    - further meetings with refugees organisations.

### **Muslims**

12. While the Commission's staff have been meeting with representatives from the Muslim community since 1998, dialogue with this group of people has been particularly appropriate and constructive since September 2001. There is much concern among the Muslim community about some aspects of reporting — particularly in connection with the ongoing war on terrorism.
13. Specifically, the Commission:

- attended the Muslims in the Community conference in Manchester in 2002;
  - meets regularly with Muslim Councils all over the country;
  - is represented on the Media Consultative Committee Working Group organised by the Muslim Council of Britain and chaired by Lord Weatherill.
14. It is essential that the Commission continues to develop its co-operative working relationship with Muslim groups and the Commission will continue to seek opportunities to engage in dialogue with them.

### **The travelling community**

15. Although not currently prominent on the national news agenda, the Commission is aware that issues surrounding travelling communities remain sensitive in individual localities. The Commission has established contact at a national level, to ensure that our service is promoted throughout the travelling community, and in the regions where appropriate. Included in the Commission's programme to liaise with community leaders have been:
- attendance at the Third Annual Conference on Traveller Law Reform;
  - contact with ACERT (Kent Traveller support group);
  - attendance at meetings of the Traveller Law Reform; and
  - visits to various Travellers' groups in Northern Ireland.
16. The Commission has considered one specific complaint on this issue when it adjudicated on a complaint lodged by Asylum Aid, Cardiff Gypsy Sites Group, Dr Evan Harris MP and others against a number of articles published in *The Sun* in 2000<sup>22</sup>. The Commission took the opportunity to outline its general policy in this area. It stated that:

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<sup>22</sup> *Asylum Aid v The Sun, Report 50*

The Commission recognises that in covering such topics there is a danger that inaccurate or misleading reporting may generate an atmosphere of fear and hostility. Although it did not find in this case that the complaints were justified, it took the opportunity to remind editors of their responsibilities under the Code to avoid discriminatory reporting .

17. While the complaint was not upheld the success of its reminder to editors can be measured by the fact that no further complaints about the issue have been made to the Commission.
18. The Commission has undertaken to maintain links with the travelling community.

### **Emergency services**

19. The Commission is in regular contact with the emergency services for obvious reasons — the sort of incidents that they cover are very likely to end up being reported in newspapers. They often care for victims of crime or accidents and relatives of the deceased. It is the Commission s priority to protect such vulnerable groups of people from inaccurate or intrusive reporting and newsgathering. Liaising with local emergency services can therefore provide a direct route to those people. To this end, the Commission has in 2002 been in contact with or met, among others:
  - the Association of Chief Fire Officers in Tamworth;
  - Kent Police Press Officers;
  - Forensic Science Service Press Office;
  - British Red Cross;
  - Coroners Society, in whose annual review an article on the Commission s work was published (See Appendix XI);
  - Leeds Bereavement Forum;
  - the Scottish Police College;

- Regional Victim Support groups — including exhibiting at their national conference.
20. The purpose of such dialogue is to ensure that problems can either be prevented entirely or dealt with directly by editors, ensuring that a formal investigation into a matter is a last resort at such difficult times.
  21. Nonetheless, the Commission has recently dealt formally with an important complaint from one of the emergency services. In 2002 the Commission upheld a complaint against the London Metro from Thames Valley Police on behalf of a rape victim who had been identifiable from information contained in the article (although her name and address was not published)<sup>23</sup>.
  22. In most similar cases, however, the Commission is in a position to resolve problems quickly. Details of resolved complaints from 2002 — which can be found in Appendix I — reveal that many of the complaints made to the Commission concern accidents, emergencies or untimely deaths. However, a few examples are included here:
    - articles discussing the World Trade Centre attacks in the Mail on Sunday and Hello! putatively identified an individual in a photograph of the twin towers. Both publications published prominent apologies to the family of the individual;
    - a woman complained that reports of the death of her father in the Newbury Weekly News and the Newbury and Thatcham Chronicle contained inaccurate and insensitive details. The editor wrote personally to the complainant to express his regret at any distress the article had caused; and
    - the parents of a young man who died in a club complained that an account of the tragedy in The Sun (Scottish edition) contained inaccuracies. The editor wrote personally to the complainant to apologise for the errors, and a clarification and apology was published in the newspaper.

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<sup>23</sup> *Thames Valley Police v Metro, Report 60*



23. The Commission already has a number of further relevant meetings planned for 2003, including one with North Wales police, military, emergency services and local authority press officers in February.

### **The Elderly**

24. The Commission recognises that older members of society may find the complaints procedure problematic for a number of reasons. Some may suffer from the physical effects of old age. These individuals have benefited from initiatives undertaken to make it easier to find out information about the Commission and to lodge complaints — including our Textphone, our large print and our audio literature — which are detailed in Section A3.
25. In addition, the Commission has established communication with a number of organisations that represent the interests of the elderly. In particular, Commission staff have attended conferences arranged by Help the Aged Conference and talked to the University of the Third Age. This dialogue ensures that our procedures are promoted to this potentially vulnerable section of society.
26. The Commission has used its adjudications to reinforce the rights of the elderly. In *A man v Daily Mail, Report 58*, the Commission made clear that residential homes for the elderly where residents were supervised for medical conditions were hospitals or similar institutions in the sense of Clause 9 (Hospitals) of the Code.

### **Those affected by mental illness**

27. The Code pays particular regard to individuals affected by mental health issues in a number of Clauses. While the provisions on accuracy and privacy apply here equally as they do to all members of society, Clause 9 (Hospitals) covers similar institutions, and Clause 13 (Discrimination) refers to prejudicial, pejorative or unnecessary reference to mental illness. These two specific references emphasise the care journalists must exercise when researching and writing on potentially sensitive mental health issues.
28. The Commission has long recognised the particularly vulnerable position of people suffering from mental health problems and has

done what it can to help to change the climate in which such matters are reported. In 1997 the Commission, following a fruitful dialogue with the Mental Health Act Commission under Dame Ruth Runciman, issued a Guidance Note which identified the sort of language that would be inappropriate when describing sufferers of mental health conditions — including those who had committed criminal offences. The Guidance Note is attached in Appendix XII.

29. The Commission has also undertaken other work in this area, including:
- attending discussion groups with Mental Health media;
  - an address at a Capita on mental illness and the media;
  - a visit to Broadmoor and a Question and Answer session with the Patients Council there;
  - visits to Mental Health Trusts — including Homerton Hospital in Hackney; and
  - meetings and regular liaison with the mental health charity MIND, as well as the Mental Health Act Commission.
30. A landmark adjudication in 1997 set out the Commission's strict approach in dealing with discriminatory reporting of mental health matters. Adjudicating on an objection to pejorative language in *Time Out* magazine, the Commission concluded that, although intended to be humorous, a columnist's remarks had misfired. They were clearly distressing to the elderly and to those with mental health problems. As such, this was clearly not in the spirit of the Code, or of the Commission's own guidance on the portrayal in the press of person's with mental illness (*Peck v Time Out, Report 40*).
31. The strength of self-regulation over any form of legal regulation was underlined when the Commission considered a complaint from the mother of a 17 year old boy, details of whose mental health problems had been given in a court case and which, legally, the newspaper was entitled to publish. However, the Commission made clear in its adjudication that the Code affords greater protection to such

vulnerable people than the law and upheld the complaint. (*A woman v Hastings and St. Leonards Observer, Report 41*).

32. On the back of these complaints, the former Chairman of the Commission, Lord Wakeham, outlined how far reporting of mental health issues had improved over the years and how standards could be raised further in a conference on these issues in February 2000. He underlined, in particular, the benefits of a conciliatory complaints process:

editors and journalists can sometimes have the same irrational fears that others have. You can change their views by explaining things to them - not in a hostile or even very public manner, but by taking things up with them when they have got something wrong, and explaining what the consequences of inaccuracy or discrimination are (Capita Conference, London, 24<sup>th</sup> February 2000).

33. In that vein, the Commission has also successfully resolved a number of complaints in this area. One recent example concerned a complaint from Trafford Mental Health Advocacy Service on behalf of a client that an account of a previous relationship had contained inaccuracies and intruded into her private life, and that she had been harassed. The magazine apologised and undertook to ensure that the article would not be published again by agreeing not to circulate it to any other publication.
34. The Commission has worked to encourage a culture of accurate and informed reporting on mental health matters. It is reassuring to note that the MIND Annual Media Awards have lauded the increasingly informed and sensitive treatment of mental health issues in the press, a view which chimes with the Commission's own private monitoring of the situation.
35. The Commission has plans for a further set of visits to Special Hospitals this year — in particular a return to Broadmoor and a visit to Ashworth.

## Hospitals

36. Those who are resident in hospitals or similar institutions are protected by Clause 9 (Hospitals) of the Code. This covers methods of newsgathering in such environments and reminds publications that the restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions .
37. Among other measures designed to heighten awareness of the Commission in the NHS, representatives from the PCC have:
- regularly attended the NHS annual conference;
  - met representatives of local Trusts when PCC regional tours have been underway (See Section D3);
  - written articles for NHS managers such as the Health and Community Care Journal (See Appendix XIII).
38. Buttrressing the rights of those in hospital — and also the rights of hospitals as institutions — the Commission has previously upheld complaints about approaches by journalists. The Code directs journalists to identify themselves to a responsible executive in order to obtain permission to enter non-public areas. There are in fact very few breaches of the Code in this area and the Commission has had cause to uphold just two complaints on this subject since 1996 (see Section C2).
39. In this area the Commission has benefited in particular from the wide range of health expertise among current and lay members of the Commission. These include Lord Chan (Paediatrician and Director of the NHS Ethnic Health Unit 1994-97), Vivien Hepworth (former Chairman of the Surrey & Sussex Health NHS Trust), Arzina Bhanji (Dental Surgeon and former Director of the Royal Hospitals NHS Trust), Dame Ruth Runciman (former Chairman, Mental Health Act Commission), and Professor Lesley Rees (Dean of St. Bartholomew s Hospital Medical College 1989-95). The significant contribution of the health sector among the PCC s lay membership underlines the importance attached to this area.

### **The Gay community**

40. Although society is of course changing in its attitudes towards homosexuality, the Commission recognises that homophobia still affects many gay people. There may be some delicate issues affecting gay people — such as employment tribunals, matters of health and parenting — that might lead to complaints about the press. However, some gay people might be reluctant to complain, being either fearful of how a newspaper might react or perhaps embarrassed about the subject matter of the complaint.
41. The Commission therefore took the opportunity of an invitation from the editor of *Gay Times* to write an article for the magazine addressing the Clauses of the Code that might help its readers and setting out how the Commission has previously dealt with complaints about gay issues. The article is reproduced in Appendix XIV.
42. In addition, the Commission has upheld or resolved a number of complaints about issues concerning gay people.
- The Commission upheld a complaint against *The Sun* in 1997 about an article that confused comment and fact in a critical piece about gay lifestyles<sup>24</sup>.
  - It upheld a complaint in 2002 from a pregnant lesbian, concluding that matters to do with her health that the newspaper published were intrusive<sup>25</sup>.
  - It resolved a complaint from four gay people who complained that an article in a Scottish newspaper intruded into their children's privacy.
  - It also resolved a complaint from Hampshire Constabulary on behalf of an officer about misleading, intrusive and discriminatory material in a report on a potential support network for gay, lesbian and bisexual officers. A newspaper that published an article which included pejorative references to his sexuality was persuaded to resolve the matter.

## Transsexual and transgendered community

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<sup>24</sup> *Crompton v The Sun, Report 41*

<sup>25</sup> *BBC Scotland v Scottish News of the World, Report 60*

43. Following concerns about the reporting of issues involving the transsexual and transgendered community, the Commission contacted a number of interested organisations to explain how the Code applied to the special concerns of this group in society.
43. Specifically, members of the Commission's staff have:
- attended meetings with the Crosslinks transsexual group in Glasgow to explain to community members at a grass roots level how a good complaint can be made out, what individuals can expect from the Commission, and how to encourage positive reporting on these issues;
  - attended the Beaumont Society Annual Conference, where they debated how newspapers report issues involving the transsexual and transgendered community and explained how the Commission could be best used to raise standards in this area;
  - written an article in the *Tartan Skirt*, a magazine for Scottish transgendered people. The article is attached in Appendix XV.

### **Schools and children**

44. This submission makes clear how the Commission and the Code give strong protection to children. (See Sections B2 and 3, and C2 and 6). It is important that schools are aware of their rights under the Code — detailed in other Sections - and how to complain if things do go wrong.
46. This area is covered in many of our significant number of meetings with local authorities — which are set out in more detail in Section D3 — many of which are responsible for education and social services.
45. In addition to our local authority work, the Commission has arranged a meeting with the Secondary Heads Association for early 2003, and has a rolling programme of co-operation with the Independent Schools Council and various children's charities.

### Conclusion

46. For some years now the Commission has embarked on a strategy of identifying particularly vulnerable groups of people for whom complaining might be an ordeal. It has undertaken a range of initiatives to help such people, to educate them about the Code and to maintain fruitful communication with them. This strategy has been successful in generating complaints and helping the vulnerable in their relationships with the press, and is something that the Commission is committed to pursuing.

**D (3) Taking the PCC out to the countries and regions of the United Kingdom**

1. One of our aims is to ensure that people from every region of the country know about the work of the PCC and are able to complain. A regional breakdown of complainants shows a fairly even geographical spread<sup>26</sup> - but there is always more to do. That is why we are committed to taking information about the PCC to the countries and regions of the UK - which involves attendance at a wide range of regional conferences, discussion forums and other interested groups. Many of these are concerned with the interests of vulnerable groups and are outlined in Section D2 above.
  
2. In 1998 the Commission embarked on a co-ordinated programme activity across the country to promote the work of the PCC at the local level. The core of these visits are meetings with local authorities, local voluntary groups and so on. In conjunction with these meetings the Commission undertakes interviews on local radio and television, holds information sessions at libraries to talk to people, and establishes and maintains contact with key local groups. In each case our aim is to:
  - explain the work of the PCC — and that its service is quick and free;
  - raise awareness of the Code;
  - explain how people can get in touch; and
  - highlight our services both with groups of vulnerable people and organisations such as local authorities who represent many different interests (including, importantly, schools and social services) that might have cause to complain.

**Scotland**

3. The Commission is keenly aware of the need to ensure its services are known to the people of Scotland. The Scottish press is different from that of the rest of the UK in some important ways — although it is bound by the terms of a Code which is universally applicable — and it is right to recognise that.

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<sup>26</sup> See p. 159



4. That is why there is always one editor from Scotland on the Commission — along with lay members such as Baroness Smith of Gilmorehill and Jenny Brown of the Scottish Arts Council. Elizabeth Smith now serves on the PCC's Appointments Commission<sup>27</sup>. Scottish editors also sit on the editors' Code Committee, and Scottish publishers on the Press Standards Board of Finance. The special interests of Scotland are therefore very well represented throughout the self-regulatory system.
5. Currently, one in ten complaints come from Scotland — and separate statistics about the Scottish press and the outcome of these complaints are published in the Annual Review. However, we can always do more to publicise our work and this Section sets out how we do it.
6. To begin with, the PCC has a special Scottish Helpline — 0131 220 6652 — to ensure that individuals ringing us from Scotland can do so at the cost of a local call. This number is widely publicised.
7. Recognising the importance of the Scottish language to an admittedly small group of people, the PCC also publishes its Code in Gaelic — an initiative that was welcomed by Comunn na Gàidhlig.
8. In the past few years the Commission has co-operated with a variety of different groups in Scotland — in addition to liaison with individual newspapers there. For instance, in 2002 the PCC:
  - attended the Citizens Advice Bureaux Scotland Conference in Dundee and exhibited there;
  - undertook seminars with Aberdeenshire City Council;
  - met with the Students Association and Rector of St Andrews University<sup>28</sup>; and
  - undertook training seminars with the Scottish Police College in Lothian.
9. These visits in 2002 were part of an ongoing programme of information, which in previous years has also included:

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<sup>27</sup> See pp. 172-3

<sup>28</sup> See p. 115

- talks to Glasgow, Edinburgh, and Inverness City Councils, with displays at the local libraries in those areas;
  - interviews with BBC Radio and Scot FM about the PCC;
  - attendance at the Scottish Parliament Conference in Edinburgh; and
  - liaison with Comunn na G idhlig prior to publication of Code in Gaelic.
10. Copies of our Bulletins and half yearly Reports are also sent to all Members of the Scottish Parliament.
11. A number of meetings for 2003 have already been scheduled, and the Commission is keen to maintain links with key organisations in regular meetings, as well as establishing new contacts in Scotland. Our programme for the coming year and beyond includes:
- meetings with the Scottish Civic Forum;
  - a seminar with Glasgow City Council; and
  - attendance at all the Scottish party political conferences.

### **Northern Ireland**

12. As with Scotland, the press in Northern Ireland faces its own set of challenges — and the Commission is keen to ensure the people there have full access to our services. The PCC was particularly pleased in 2002 when Edmund Curran, Editor of the Belfast Telegraph, became the first editor from the Province to serve on the Commission.
13. A recent roadshow in Northern Ireland covered the cities and provinces of Belfast, Derry, Omagh and Coleraine. Commission representatives met with the local councils in these regions, exhibited in relevant local libraries and promoted the visit on BBC Radio 4 and Radio Foyle.
14. In addition, the Commission has held constructive meetings with:
- a number of Belfast groups representing the interests of the Travelling community in Ulster;
  - Steer, a mental health information group based in Derry; and
  - the Equality Commission of NI.

15. In 2003 we will undertake further meetings in Northern Ireland. A meeting with PR practitioners in Northern Ireland is already scheduled, under the auspices of the Institute of Public Relations, at a seminar in Newry and Mourne in March.

### **The North of England**

1. The Commission is keen to spread information about itself across the regions of England as well — and, again, targets its resources on groups and organisations to which potential complainants might turn for help.
2. In 2002 the Commission undertook a number of engagements in the North of England. This included:
  - seminars with Copeland, South Lakeland, Allerdale, Carlisle and Eden local authorities as part of a Cumbria roadshow (which took place in the wake of the Foot and Mouth outbreak);
  - displays at relevant local libraries and Citizens Advice Bureaux;
  - attendance at the Local Government Authority conference in Harrogate;
  - seminars and meetings with Granada TV in Manchester to discuss some of the issues relating to more high profile complaints.
3. In previous years, other important work in this part of the country has also included:
  - the National Association of Citizens Advice Bureaux Conference in York;
  - meetings with Yorkshire Television in Leeds;
  - seminars with Liverpool and Manchester local authorities during a North West roadshow;
  - exhibitions in local libraries in Manchester, Liverpool and Newcastle, promoted by BBC Radio interviews .
4. The Commission has two main visits to the North of England planned for 2003. It is hoped that these major projects will establish new contacts as well as strengthening existing links with key organisations in these regions. Plans include:

- a Leeds and Sheffield roadshow to include meetings with local authorities, media, libraries and Citizens Advice Bureaux
- a programme of seminars and exhibitions in the North East encompassing meetings in Newcastle, South Shields, Sunderland and Gateshead.

## Wales

5. As set out in Section A2 (para. 12), the Commission is keen to expand on its information programme in Wales to complement the work the PCC has already undertaken there.
6. As part of its commitment to Wales, the PCC publishes its Code and information on how to complain in the Welsh language — something that is promoted on every tour. From time to time, the PCC will receive complaints in Welsh and is always happy to handle them accordingly.
7. A recent roadshow in South Wales resulted in meetings with the following organisations:
  - City Councils in Newport, Cardiff, Bridgend and Swansea;
  - an exhibition at local libraries in these cities in conjunction with BBC Radio interviews;
  - attendance at the Media and Film 2002 Conference in Cardiff.
8. The Commission has also exhibited at the Welsh Local Government Association Conference in Llandudno.
9. In 2003, we are hoping to shore up existing contact in both North and South Wales with two major roadshows.
  - A North Wales roadshow planned for February will include meetings with Conway, Denbyshire, Gwyneth and Anglesey local authorities, accompanying libraries and CABx
  - The South Wales roadshow in mid-Spring will establish contact with the Welsh Assembly Press Office, and will involve meetings with local councils and CABx and library displays.

- We will also attend a meeting of the six North Wales local authority press officers, including liaison with police and emergency services in those areas.

### **The Midlands**

10. The Commission has established firm links with the UK's second largest city. Our first roadshow to Birmingham in 2000 included local authority and press visits, library displays and three radio interviews. A year later we followed up this visit with a second roadshow. In addition, Commission representatives met with other local authorities, combined with exhibitions, in:

- Dudley; and
- Sandwell.

11. The Commission has arranged extensive visits throughout the rest of the Midlands in recent years, including the following:

- Nottingham roadshow, involving talks to Nottinghamshire County Council and Nottingham City Council, library exhibition, BBC Radio Nottingham interview and meetings with local press;
- meetings with County Councils in Shropshire and Leicestershire;
- English Speaking Union in Leicestershire; and
- participation in Nottinghamshire Police 'Veto on Violence' Conference.

12. In 2003 we plan to take the roadshow to Derby and surrounding areas.

### **The South of England**

13. The Commission has recently undertaken roadshows in key parts of the South of England most affected by issues relating to asylum seekers and refugees<sup>29</sup> — this included a tour of Kent, including

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<sup>29</sup> This is part of a wider initiative on this subject — see Section D2, pp. 138-140

Shepway and Dover District Councils, and other local authorities in the area.

14. In addition, the Commission has over the last few years undertaken a comprehensive programme of meetings with local authorities across London and the South of England. These include:
  - the London Boroughs of Brent, Hackney, Bromley, Redbridge and Hounslow;
  - Wiltshire County Council
  - Hampshire County Council
  - West Sussex County Council
  - Hertfordshire County Council
  - Kent County Council
  - Essex County Council
  - Gloucestershire County Council; and
  - Bedfordshire County Council.
15. Last year, the PCC undertook a roadshow in Norwich, involving meetings with Norfolk County and City Councils and the central Citizens Advice Bureau, and live phone-in on BBC Radio Norfolk to promote library exhibition.
16. Plans for 2003 include seminars and exhibitions as part of a roadshow in Devon and Cornwall — as well as ongoing initiatives in London and the rest of the South of England. A separate tour is planned for the Isle of Wight and the Channel Islands.

### Conclusion

17. This Section has demonstrated the wide range of activities the PCC has undertaken to take information about itself to the countries and regions of the UK — work to which we continue to be committed. The map on the following page underlines the point by highlighting those areas of the country the PCC has recently covered.

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Roadlines and Exhibitions 2001/2002

**D (4) Training tomorrow s journalists**

1. In 1993, the National Heritage Committee made the very sensible recommendation that the training of journalists would fall suitably within the remit of the Press Commission . The task, of course, fell to the PCC — and it has been our clear aim since then to create a culture in which the next generation of journalists is versed in the terms of the Code and the important issue of press ethics. The Commission therefore now plays a large — and ever-increasing — role in the training of journalists across the country.
2. This involvement has, in turn, been fostered and encouraged by the industry itself. Newspapers now expect their journalists to have a grounding in the terms of the Code of Practice and an awareness in the procedures of the PCC. The commitment therefore exists to raise professional standards within a framework that the PCC has established.
3. One good example of the importance of the PCC s role in training is apparent in the assessment structure of the National Council for the Training of Journalists. The NCTJ has placed awareness of the Press Complaints Commission and the terms of the Code as a necessary criterion before a journalist can be qualified. Below is reproduced the relevant section of its performance criteria for examinations, which must be fulfilled by the trainee to ensure that he or she has demonstrated the ability to establish and maintain professional relations with members of the public .
  - Awareness is shown of the newspaper s important role in the community.
  - Awareness is shown of the principles of the Press Complaints Commission and of the codes of practice of the PCC and other organisations.
  - A responsible and objective approach is shown in writing about crime and its effect on victims.



- Responsibility and objectivity are shown in writing about racial matters and ethnic minorities.
  - Responsibility and objectivity are shown in writing about disabled people.
  - Office policy is followed on confidentiality of sources, treatment of information offered off the record, and if and when to conceal one's identity.
  - Inquiries, comments and complaints from members of the public are handled according to office policy <sup>30</sup>.
4. Of course, the PCC's status as a classroom topic would only have a limited effect without more direct involvement by its members of staff. In fact, the PCC visits colleges regularly, with Professor Robert Pinker, the current Acting Chairman, often lecturing at training colleges, accompanied by an experienced Complaints Officer or External Affairs Officer. These lectures are always followed by discussion with the students, in which any questions can be answered about the workings of the PCC.
  5. Further information is, of course, also available on the PCC website. A section, specifically designed to help students, has been recently overhauled. This includes detailed answers to frequently-asked questions, a run-down of the development of the Code of Practice and information about interesting cases. It is an extremely useful, and well-used, resource which supplements and assists the colleges teaching.
  6. Issues raised on the website, or in the colleges, can be further discussed on the telephone with a designated and experienced Complaints Officer. The PCC always seeks to make itself accessible and receives a number of calls from students every week, to which it is always happy to respond.
  7. The PCC is committed to its role in training journalists of the future, in the future. 2003 will see an increase in its college visits and a

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<sup>30</sup> Source: NCTJ 2002

maintenance of its involvement in all stages of the training process. It is very much aware that, by ensuring that a generation of journalists are familiar with, and accept the importance of, the Code of Practice, it is acting to improve standards within the industry on a long-term basis. Its involvement in journalist training will also ensure that the institution of self-regulation, so crucial to a democratic way of life, is strengthened and made increasingly effective in years to come.

8. In recent years, the Commission has visited the following colleges:

Bacon's College	Palmers College
Bournemouth University	St Leonard s Editorial Centre
Bridgwater College	St Mary s, Blackburn
Brighton Centre for Journalism	Sheffield College
Brunel University	SE Essex College
Caledonian University and Bell Higher Education College (Glasgow)	Staffordshire University
Cardiff University	Strathclyde University
Teachers Media Conference in Cardiff	University of Sussex
Chiswick Community School	Sutton Coldfield College
City University	Trinity and All Saints College, Leeds
Cornwall College	Trinity Mirror trainee journalists in Glasgow
Crawley College	University of Ulster
Darlington College	Warrington College
East Devon College	West Herts College
East Surrey College	Wolverhampton College
Falkirk College	
Guildhall University MA	
Gwent Tertiary College	
Harlow College	
Harrow College	
Hastings Editorial Centre	
Media Studies VI Form conference at Camden Town Hall	
Napier University	
Newcastle University	
Nottingham College	
Nottingham Trent University	

### **D (5) Making information available easily and quickly**

1. The Commission is aware of the importance of promoting awareness of its services beyond those groups of individuals who may wish to complain and the next generation of journalists. Self-regulation of the press is an important aspect of public policy — and many interested groups at home and abroad require information about it. The PCC's duty is to ensure that it is available easily and quickly — and that we respond constructively to all requests for information.

#### Advertisements

2. One of the most straightforward ways of publicising the Commission is through the use of advertisements in newspapers and magazines. As part of its commitment to the system of self-regulation, the industry has undertaken to publish regular adverts for the PCC without charge. The adverts contain information about what people can complain about, how to complain and how to get in touch with the Commission. New advertisements — a copy of which is in Appendix XVI — were distributed in 2002.

#### Website

3. An increasingly important part of the Commission's strategy to make information widely known is through the web, and the PCC is committed to maintaining a comprehensive and user-friendly website.
  4. The PCC first went online with its website —[www.pcc.org.uk](http://www.pcc.org.uk) — in 1996. It was substantially overhauled in 2000 to improve its efficiency and at the start of this year is now receiving an average of 240 visits per day — a figure denoting considerable consumer and industry recognition. Some of its main elements are set out here.
- *A complete history of all adjudications since 1996.* Users are able to search through the Commission's decisions of the last seven years. This means that not only is the consistency of the Commission's rulings open to constant scrutiny, but also that interested parties — the complainant or, indeed, the newspaper — can appreciate the context in which a complaint is framed. Given the importance with

which PCC jurisprudence is now regarded in the industry, and indeed by the Courts, this is an essential element of the site

- *A summary of all resolved complaints since 1996.* An additional benefit of a complaint being resolved through the Commission's offices is that a summary of the case is published on the website. This ensures that there is a public record of the complainant's concerns and the action taken by the newspaper.
- *Details about how to make a complaint.* As well as details about how to submit a complaint in writing, the site also provides an on-line complaints form (an initiative taken in 2000), together with answers to frequently-asked questions. This explains what the Commission can and cannot do and means that a user will easily find all the information necessary to make a complaint.
- *The Code of Practice.* Complainants will be able to identify the area under which their concerns might fall and also get an idea of the reasoning behind, and the development of, the Code with which newspapers are obliged to comply. The Code in Welsh is also on the site, along with details of how to obtain literature in minority languages.
- *The history of the PCC.* A whole section of the website is devoted to the constitution and development of the organisation. It includes: details of Commission members and the machinery by which they are appointed; key benefits of the system; an on-line version of every annual report since 1996; and an historical overview of the last 12 years.
- *A student section.* We have responded to the considerable academic interest in the Commission and the philosophy of self-regulation and developed the site accordingly. It contains details about the organisation, answers questions that have been frequently asked over the last few years, and generally acts as a useful guide to all those interested in the more theoretical aspect of the PCC.
- *PCC Guidance Notes.* From time to time, the Commission issues guidelines about pressing issues that have come to its attention. A full

catalogue of these texts is on the site — on issues such as the reporting of mental health issues or the identification of lottery winners.

- *Press releases and breaking news.* The site is updated regularly with all news relating to the PCC, including importantly the most recent adjudications. People can sign up to a mailing list to guarantee that they will receive up-to-date information about the PCC and currently over 800 people receive weekly news bulletins from the Commission.
  - *Diary.* All the engagements undertaken by the office are listed.
  - *Links.* The website provides links to useful online resources, such as other regulatory bodies and the Citizens Advice Bureau. Links to the PCC's website have also been co-ordinated with a number of interested organisations, which are listed in Appendix XVII.
5. One useful site to which the PCC's site is linked — and in the development of which, indeed, the PCC was at the forefront — covers Press Councils around the globe: [www.presscouncils.org](http://www.presscouncils.org). This site provides information about international press issues and includes a forum for discussion, among registered users, about the relevant matters associated with self-regulation worldwide. This site will be increasingly useful for UK newspaper readers who want to complain about a foreign publication (or foreign newspaper website) and need details of the relevant regulatory authority<sup>31</sup>.

#### Lawyers and other professional groups

6. Recent developments relating to media law, most notably the incorporation into UK law of the European Convention on Human Rights in October 2001, are set out in detail in Section C5. This has meant that there has been considerable demand to address groups of lawyers and other professional organisations, including think tanks, about the work and case law of the PCC. There is no need to produce a full list here — it would be voluminous - but seminars in the last few months include:

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<sup>31</sup> See p. 213

- Hogarth Chambers on privacy;
- S J Berwin seminar on media law and privacy;
- conference organised by Justice on Human Rights;
- the Media Law Networking Conference Project in Oxford;
- the Institute of Public Relations;
- UCL conference on Human Rights, Privacy & the Media; and
- the Institute of Public Policy Research.

#### Civic groups

7. The Commission has utilised invitations to speak at events hosted by individual organisations and civic groups to talk about how the service it provides can make a difference to their industries and to set out key points about its work. By way of illustration only, the Commission has arranged and attended conferences, seminars, private meetings and other events with, among others:

- the National Union of Students;
- Chartered Accountants in Business Group;
- English Speaking Union and Probus Clubs in East Midlands, Sussex and Surrey;
- CSN conference on co-ordinating services to the public;
- UNISON Conference
- English and Wales Cricket Board;
- Rugby Football Union; and
- Newcastle United Football Club.

8. In addition, the PCC responds to requests from broadcasters and others who wish to discuss issues that relate to more high profile public figures. In recent years these have included seminars and talks to Granada Television in Manchester, the BBC at Elstree, LWT in London and Yorkshire Television in Leeds.

#### Liaison with the industry

9. Crucial to the proper functioning of self-regulation is, of course, liaison with the newspaper and magazine industry. The PCC and its officers regularly attend conferences and training seminars across the different parts of the industry to ensure that editors and journalists are

aware of developments in the PCC's jurisprudence. These include, again simply by way of illustration, meetings with and speeches to:

- the Society of Editors;
- Newspaper Society;
- Periodical Publishers Association;
- British Association of Journalists;
- National Council for the Training of Journalists;
- Scottish Daily Newspaper Society;
- London Press Club; and
- individual publishers' training conferences.

The Commission is committed to maintaining this regular liaison — and responding constructively to all requests for information and training.

#### The International Community

10. There is considerable interest abroad in the work of the PCC — as Section F outlines in more detail. That means that the Commission receives many requests for information and talks from the international community in London, and others who are visiting. For instance, the Commission regularly undertakes seminar programmes for foreign educational establishments based in the UK, including:
  - University of Arkansas
  - University of Bergen
  - University of Missouri
  - University of Nebraska
  - Southern Illinois University
  - University of Southern Mississippi
  - Syracuse University
11. Many other requests come through the Foreign and Commonwealth Office, and over the last year the Commission has briefed substantial numbers of individuals. A list of these is in Appendix XVIII.
12. We are mindful that the representatives of foreign Governments in the UK sometimes have need to complain about coverage of their

countries. We maintain an informal programme of meetings with individual Embassies, which have recently included those from:

- Australia;
- Belgium;
- Denmark;
- Japan;
- Norway;
- the United Arab Emirates; and
- the United States.

Meetings have also been organised with the European Commission offices in London.



**SECTION E**  
**STRUCTURES AND PROCEDURES**



## E (1) An independent Commission and appointments process

1. This Section deals with a number of issues relating to the PCC's procedures, in particular seeking to outline how they are as open and transparent as possible. It covers appointments, the various structure of the self-regulatory system, sanctions, own volition and third party complaints, and the issue of media monitoring.

### An independent Commission

2. It is — regrettably — a common misconception that the PCC is dominated by newspaper editors. Of course, newspaper and magazine editors must play their part: it is, after all, a system of self-regulation which could not work without input from the industry being regulated. And, similarly, there is industry funding for the system — which means that people can make complaints free of charge.
3. But — and it is a hugely important but — the PCC itself, the body which determines whether or not a newspaper or magazine editor should be censured for a breach of the Code, is dominated by lay people.
4. Since 1995, when the appointments process was fully reformed (part in thanks to the constructive suggestions of the 1993 Select Committee report), there has been an inbuilt majority of public or lay members on the Commission. Of sixteen members, nine — including the Chairman — are lay people, totally unconnected with the press. Seven are senior serving editors, or editors in chief, from across the newspaper industry. This combination guarantees the independence of the PCC, at the same time as ensuring that its decisions take full account of the day to day practicalities of the industry.
5. It is worth noting here, in passing, that no members of the full time staff at the PCC — who investigate complaints and seek to resolve — have any connection with the newspaper industry either (unlike the old Press Council).

How appointments are made

6. Crucial to the independence of the lay members, of course, is the fact that they are themselves appointed by a body which is also independent of the press. This ensures that they are not, in any way, responsible to the industry — and that their independence is guaranteed by a clearly independent appointments process.
7. To that end, the PCC maintains an Appointments Commission — itself reformed in 1995 — which is responsible for all appointments to the PCC and the Code Committee.
  - Editorial appointments to the PCC are proposed through the relevant newspaper and magazine trade associations (as set out in para. 15 below) but the Appointments Commission must scrutinise and ratify them before an editor becomes a member of the PCC.
  - Lay appointments, however, have nothing to do with the industry. Nominations come from within the Appointments Commission — which decides on appropriate individuals, and sets a term of service for them.
8. There are five people on the Appointments Commission. Only one of these five is in any way connected with the newspaper industry — and that is the Chairman of Pressbof, currently Sir Harry Roche (who is also Chairman of PA News).
9. The other four members are all lay people. They are:
  - the Chairman of the PCC (currently Professor Pinker);
  - Lord Mayhew of Twysden QC (Attorney General 1987-92; Secretary of State for Northern Ireland 1992-97);
  - Mr David Clementi (Deputy Governor of the Bank of England 1997-2002; Chairman of Prudential plc 2002-); and
  - Baroness Smith of Gilmorehill (Chairman, Edinburgh Festival Fringe 1995; President of Birkbeck College, London 1998- ; President of Scottish Opera 1997-).

10. Appointments to the Appointments Commission are made following agreement between the Chairman of the PCC and the Chairman of Pressbof, and individuals who serve must have no connection with the newspaper or magazine publishing industry. Appointments are made to ensure, as far as possible on a small body, gender, regional and (if appropriate) political balance.
11. Previous members of the Appointments Commission, under the Chairmanship of Lord Wakeham, have included:
  - Lord Irvine of Lairg QC;
  - Mrs Mary Francis;
  - Sir Geoffrey Holland;
  - Sir Denys Henderson.

#### The Chairman

12. The Chairman of the PCC is appointed by the Press Standards Board of Finance. The PCC's Memorandum and Articles of Association states that the Chairman must not be engaged in, or otherwise than by his office as Chairman, connected with or interested in the business of publishing newspapers, periodicals, or magazines (para 6.2). This is to ensure that the Chairman is independent of the industry. The current Acting Chairman is Professor Robert Pinker, Professor Emeritus of Social Administration at the LSE; the Chairman-designate is Sir Christopher Meyer, currently British Ambassador in Washington, who takes up the post later in the year. The previous Chairmen have, of course, been Lord MacGregor of Durris (1991-94) and Lord Wakeham (1995-2002).

#### The Commission

13. The full list of current members of the Commission is set out in Appendix XIX. In Appendix XX there is a list of former members for information.
14. As far as possible, the Appointments Commission seeks to ensure a fair balance of individuals on the PCC — including ethnic and women members, and a geographical balance.

15. There are — as set out above — seven editors on the PCC. These comprise individuals drawn from across the national, Scottish, regional and periodical press, recommended by their four trade associations, and approved by the Appointments Commission:
  - the Newspaper Publishers Association — which nominates three national newspaper editors;
  - the Newspaper Society — which nominates two editors from the local and regional press in England, Wales and Northern Ireland;
  - the Scottish Daily Newspaper Society — which nominates an editor from a Scottish publication; and
  - the Periodical Publishers Association — which nominates a magazine or periodical editor.
16. Over the years, the regional editors in particular have ensured that there has been a good balance of regional interests on the Commission. Editors have come from newspapers in Northern Ireland, Manchester, Newcastle, Surrey, Liverpool, Portsmouth, Suffolk, London, Shropshire and Sunderland. There is — as noted above — also always an editor from Scotland: editors from there have come from Aberdeen, Glasgow, Dundee and Edinburgh.
17. As far as the national press is concerned, there has also been a balance to ensure representation across publishing houses. A note on this is set out in Appendix XXI.
18. For the lay members, the Appointments Commission seeks individuals from different walks of life who are (a) demonstrably independent of the press and (b) of sufficient standing to play a fully independent part in discussions at meetings of the Press Complaints Commission on some of the complex issues that arise from complaints. It also seeks to achieve, as far as possible, a gender and ethnic balance.
19. Of the current eight lay members on the Commission (there is one vacancy at the time of submission of this Report), there are four women and four men. Two of the eight members — Lord Chan of Oxton and Mrs Arzina Bhanji — are from ethnic minorities.

20. Lay members are from a number of diverse backgrounds. Current members — including the Chairman — come from the following backgrounds:
- a Professor Emeritus of Social Administration at the LSE;
  - a former Chairman of an NHS Health Trust;
  - a Church of England Bishop;
  - a former teacher, and General Secretary of a schools organisation;
  - the Chief Executive of a big City trade body representing insurers, and former Treasury civil servant;
  - a distinguished paediatrician from Merseyside and former member of the Commission for Racial Equality;
  - a former Director General of a well known consumer organisation; and
  - a dental surgeon who is a former Director of a large Health Trust in London.

## E (2) Code Committee and Pressbof

1. Both the Code of Practice Committee and the Press Standards Board of Finance (Pressbof) are likely to make separate submissions to the Committee. This short Section is just to set their own roles in the self-regulatory system in context.

### The Code Committee

2. As it set out in Section B, the Code is kept up to date and practical by a Committee of national, regional and periodical editors. These are nominated by the same trade associations set out on p. 176 above, and appointments are approved by the Appointments Commission. A list of those currently serving on the Code Committee is set out in Appendix XXII.
3. As with the Commission's editorial members, the industry has sought to ensure a good regional balance among the Committee's members. Current members come from Bradford, Portsmouth, Rotherham, Hampshire, Gloucestershire and Aberdeen. National editors also come from a broad range of publishers. A note on this is in Appendix XXI.
4. To ensure smooth liaison between the PCC and the Code Committee, the Chairman and Director of the Commission attend its meetings in an ex-officio capacity. The Commission also has a small sub Committee of lay members which takes part in the consultation process on any potential changes to the Code — principally because it is the independent Commission which has to ratify the Code before any changes are made to it.
5. Over the years the Commission has made a number of its own proposals for changes to the Code to the Committee, as a result of its own handling of complaints. One set of important changes, for instance, came about when the Commission asked the Code Committee to extend the range of Clause 5 (Intrusion into Grief and Shock) of the Code so that it could deal with more complaints about the publication of material at such times.



Pressbof

6. The Press Standards Board of Finance co-ordinates the industry side of the system of self-regulation. It is responsible for the appointment of the Chairman of the Commission, the collection of revenue to fund the PCC, overseeing the Code, ensuring appropriately balanced editorial recommendations for the Commission and nominations to the Code Committee are made to the Appointments Commission, and dealing with public policy issues that may impact on the industry's own self-regulation.
7. The main liaison between Pressbof and the Commission is, of course, over revenue. Pressbof's own mechanisms for raising revenue are entirely separate from the PCC which has no involvement in, or knowledge about, the matter. The PCC submits a detailed budget, agreed by the members of the PCC's Business Committee (which is made up of lay members), to Pressbof once a year to fund its activities for the coming year. Although the PCC is of course responsible to the Board for meeting that budget, and answering questions about areas of expenditure, Pressbof has never interfered with the PCC's own spending plans, as an independent body, and has always met the requests made of it generously and in full. Without that commitment, the PCC could never meet the high standards of service that are set out in Section A, or fulfil the substantial programme of public information that is detailed in Section D<sup>32</sup>.

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<sup>32</sup> It is worth, perhaps, pointing out that a survey shows that 64% of people agreed that the PCC should be funded by the industry — see p.137

### E (3) Sanctions

1. One consistent theme recurs in any criticism of self-regulation — indeed it was the leitmotiv for the 1993 Select Committee report — and that is the alleged lack of sanctions available to the PCC. This Section outlines the strength of the system as it stands, and addresses those criticisms.

#### Background

2. The original blueprint for the PCC's system of sanctions came from the Calcutt Report. As such, this was in line with the sanctions available to what was then the Broadcasting Complaints Commission which, although a statutory body with legal force, had no power to fine but to issue adjudications. (Indeed, neither does its successor the Broadcasting Standards Commission.)
3. Allied to this was another recommendation of Calcutt — the abolition of the old Press Council's so-called legal waiver. Under the Press Council, complainants were asked to waive their right to legal redress. No such waiver exists under the PCC: complainants are free, should they so wish, to pursue a legal action (and any claim for damages) once the Commission has finished dealing with their complaint<sup>33</sup>. The fact that barely a handful of complainants out of the 25,000 complaints we have dealt with since 1991 has done so suggests that there is no significant desire among ordinary complainants to seek monetary compensation.
4. The reason behind this choice of sanction for the Commission is clear — and, indeed, much of the debate (when it arises) about sanctions misses the point — that the PCC is at heart an alternative dispute resolution mechanism. It is intended as a forum in which complaints can be conciliated and resolved without the panoply of legal apparatus that makes such conflict resolution impossible.

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<sup>33</sup> The Commission is debarred only from dealing with an action which is the subject of current legal proceedings.

The power of the adjudication

5. A critical adjudication against a newspaper or magazine is a powerful weapon — as any editor will testify. It must be published in full and with due prominence in the publication criticised, which is an admission to the readers that the editor broke the rules which he or she had helped to frame and by which he or she had agreed to abide.
6. Because of the role of publishers in the system, a critical adjudication — which is tantamount to an individual being criticised by his or her own professional body — also becomes an issue within a newspaper. Publishers regularly monitor the decisions of the Commission and investigate the background to breaches of the Code on their publications.
7. Furthermore, because of the competitive market place in which most newspapers and magazines operate, a critical adjudication against one editor swiftly becomes a weapon in the armoury of that newspaper's competitors. Editors regularly give coverage to critical adjudications against their rivals in a way which is calculated to challenge the loyalty of readers to the offending publication.

Strengthening the sanction

8. The critical adjudication is, therefore, a powerful sanction — but, partly in response to the proposals contained in the Second Calcutt Report and the 1993 Select Committee Report, the industry took steps to strengthen it even further in the mid 1990s.
9. First, publishers moved to ensure that compliance with the Code became a part of their editors' contracts of employment — a point dealt with in more detail in Section B4.
10. Second, and building on that important initiative, the Commission itself announced in January 1994 that it would in future bring instances of severe or calculated breaches of the Code of Practice (whose terms are incorporated into the conditions of employment of

members of staff of many newspapers) to the attention of the publishers.<sup>34</sup>

11. The Commission has made use of that facility — which obviously should only be used in the most serious cases — on two occasions:
  - in the first case, the PCC referred a serious breach of the Code relating to pictures of Countess Spencer in a bulimia clinic, published in the News of the World in April 1995, to the publisher. The PCC's adjudication, and the response of the publisher to the Commission, is set out in Appendix XXIII;
  - in the second case, the Commission referred the multiple and serious breaches of the financial journalism provisions of the Code in the City Slicker complaints to the publisher of The Mirror. The publisher accepted the Commission's findings and implemented root and branch changes to the way matters relating to financial journalism, and the provisions of the Code in this area, were policed on the newspaper.
12. In one other case, the Commission heavily censured The Evening Standard for breaking the rules concerning the interviewing of children at school and the identification of children in sex cases. The Commission took the unusual step of asking the editor to review the application of the Code across his newspaper — and the editor wrote back to confirm that this had taken place. A copy of that adjudication is at Appendix XXIV.
13. The Commission has always found that — against the background of its principle role as a dispute resolution mechanism — these sanctions are (a) adequate and (b) powerful.

#### Compensation and fines

14. Indeed, there is a danger that any further sanctions — for instance compensation or fines — would both be impractical and would undermine the Commission's vital conciliation work.

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<sup>34</sup> Professor Richard Shannon, *A Press Free and Responsible* (September 2001), pp. 156-7 and 162

15. The clear and overwhelming case against privacy laws and a statutory ombudsman is set out in Annex 4 — and many of these points apply to any analysis of the case against fines and compensation, but it might be useful to summarise them here.
16. To begin with, the PCC could not establish a system in which it awarded compensation and imposed fines without some form of legal powers — as it would be powerless if a newspaper or magazine refused to pay. That would mean turning the PCC's common-sense system of conciliation into a legal system, with all its failings. Any system which involved the law and newspapers would mean:
  - costs for the complainants — which would seriously limit the accessibility of the PCC to ordinary members of the public;
  - delay (a point dealt with below);
  - the need for a range of legal powers to investigate complaints — including oral hearings on oath, powers to subpoena documents and so on — as well as a cumbersome appeals process; and
  - legal representation for complainants.
17. Even a brief survey of the difference in time it takes to deal with a complaint through lawyers, and complaints direct from ordinary people, under the PCC now underlines the point. In 2002, while the average time to deal with all complaints was 32 working days, complaints made through lawyers took an average of 71 working days - 122% longer<sup>35</sup>. Furthermore, it took an average of 84 working days for a complaint through a lawyer or other representative to be resolved — nearly half as long again as complaints resolved directly with the complainant, without any difference to the success rate. This is merely a flavour of what any form of statutory control, or system involving fines and compensation, would entail. The PCC has always believed that justice delayed is justice denied — and any legal system would certainly do that.

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These and other statistics are set out in more detail in Section A4.

18. Even more importantly, a system of fines and compensation would fatally undermine the PCC's role as a conciliator. Newspapers and magazines would be unlikely to agree a resolution to a complaint if they thought it was the first rung in a legal process that could lead to damages against them. That would constitute a great disservice to most of the people who complain to us who seek more than anything else a correction and apology for breaches of the Code<sup>36</sup>.
19. The legalisation of the system — with incumbent appeals processes that would be required under the Human Rights Act — would inevitably mean the majority of complaints being dealt with by newspaper or magazine lawyers. That in turn would either put ordinary people off complaining or mean that they themselves had to employ lawyers. The costs involved with that would make the system inaccessible.
20. As set out in more detail in Annex 4, there is actually no evidence that substantial fines would be a deterrent to successful newspapers — who may be happy simply to pay the fine for carrying intrusive material that gave them a short term circulation boost. However, there is a possibility that fines could put some smaller, less commercially successful local newspapers out of business, with all the implications for press freedom and diversity of news inherent in that.
21. These, and other issues, are explored in more detail in Annex 4.

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<sup>36</sup> Compare with the current situation in the Republic of Ireland, where newspapers have no culture of correcting mistakes because of the legal ramifications of doing so.

#### E (4) Own volition and third party complaints

1. One of the issues that marks the PCC out from its predecessor, the Press Council, is the question of third party complaints. These are, of course, a form of own volition complaint in that all major stories which the PCC might investigate of its own accord inevitably attract third party complaints — and the difference between the two is largely one of semantics. They are dealt with accordingly here.
2. The Press Complaints Commission itself addressed this matter in 1998, when the issue received a certain amount of public attention in the wake of one or two high profile privacy cases. The arguments set out in this Section were endorsed by the Commission accordingly, and reproduced here.

#### Background

3. Before addressing the practical problems raised by the use of own volition complaints, there are a number of background points that it is worth noting.
  - First, it is wrong to say that the PCC does not have the power to raise its own complaints. The Commission does - and has done since 1994, when our Memorandum and Article of Association were changed to allow us to do so.<sup>37</sup> Since then, we have acted on our own volition on a number of occasions when a newspaper article has raised wide issues of public interest - and there was good reason why no complaint was going to be made to us. This happened, for instance, over:
    - (i) the identification of the winner of the first rollover jackpot on the lottery<sup>38</sup>;

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<sup>37</sup> According to article 53.4 of the Commission's Memorandum and Articles of Association: Notwithstanding the provisions of Article 53.3, the Commission shall have discretion to consider any complaint from whatever source that it considers appropriate to the effective discharge of its function.

<sup>38</sup> See PCC statement of March 1995.

- (ii) various cases of payments to criminals <sup>39</sup>;
- (iii) allegations of inappropriate share dealing — the case of the City Slickers <sup>40</sup>;
- (iii) cases involving witness payments<sup>41</sup>.

In each case the Commission was happy to act of its own volition on the back of third party complaints — but only once it had satisfied itself that (a) that there were broad matters of public interest at stake and (b) nobody directly involved could complain. (In the case of payments to criminals and witnesses, and of financial journalism, this will always remain the case — as those directly involved are likely to be people who have actually benefited from any breach of the Code.)

4. Second, the reason that the Commission has always been extremely wary of own volition or third party complaints is that it was their unfettered use which was one of the causes of the demise of the Press Council. It should also be remembered that the practical result of the Press Council's procedures was that the system of investigating complaints, and calling witnesses on them, became extremely slow: it could often take two years to adjudicate on a complaint because the Council was busy with complaints that no one directly involved had raised. The loser from that were ordinary members of the public who *did* bother to complain, but had to wait a long time for a result. Now, the PCC can deal with complaints in an average of 32 working days: swift justice is the flip side of the third party complaint coin.
5. Third, the volume of complaints received by the PCC - over 2,500 each year and nearly 30,000 since the Commission was established - does not suggest that there is any unwillingness on behalf of members of the public to complain, or that the Commission is inaccessible. In fact, the PCC receives more complaints each year than every other Press Council or Commission in the rest of Europe put together<sup>42</sup>.

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<sup>39</sup> For example, regarding the serialisation of a book about Mary Bell in The Times, Report 43, and regarding payments made by The Sun to Ronnie Biggs, Report 54.

<sup>40</sup> See Report 50

<sup>41</sup> The relevant trials were Gary Glitter (Report 48) and Amy Gehring (Report 57)

<sup>42</sup> It is worth noting that the PCC does not, in fact, now receive all that many third party complaints. Only 6% of the total last year turned out to be third party complaints.



6. Fourth, virtually every other similar regulatory body adopts the same procedure as the PCC - acting only on the back of a complaint from somebody directly involved. The Broadcasting Standards Commission, for instance, which draws its powers from statute can only act on the basis of a complaint from those directly involved in an intrusion into privacy.
7. Fifth, it is worth noting that the only other Press Council or Press Commission in Europe which *regularly* raises its own complaints is that of Turkey. There, the Press Council utilises own volition complaints as a means of encouraging pro-Government reporting. It is, in other words, state control by the back door. Two other Press Councils — Cyprus and Norway — sometimes raise their own complaints. Every other European Press Council rejects the use of own volition complaints - most of them for the reasons set out in this paper — except (as with the PCC) in exceptional circumstances<sup>43</sup>.

#### The problems involved

8. Against that background, there are a significant number of practical problems involved in pro-activity and the taking up of third party complaints, as well as one overwhelming philosophical problem - that it would turn the Commission into a two-tier complaints service. This Section deals with the practical problems at the end - but it is worth looking at the broader philosophical issue first.

#### Do we want a two-tier system of regulation?

9. The PCC has always invested a huge amount of resources and energy in ensuring that people know about the Commission and about how to make a complaint. This is set out in detail in Section D of this submission. Judging by the number of complaints we receive, the service is now well known - and members of the public obviously have confidence in it: they would not bother complaining in such numbers otherwise.

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<sup>43</sup> Source — Professor Clause-Jean Bertrand, questionnaire to European Press Councils in 2000. Note that no information was supplied by Iceland.

10. Furthermore, we get complaints from every type of person and every region of the country, as we set out in detail in Sections A and C.
11. An argument is often made that celebrities and public figures (as well as people in the public eye as a result of their infamy) are wary of complaining, because it produces yet more publicity. Yet there is no evidence for this either. In the last year or so we have received complaints from Members of the Royal Family, a number of Government Ministers, from MPs, from celebrities (including well-known soap stars and singers), from criminals, from high-ranking police officers, from Bishops and from High Court Judges. All these people took the decision to complain in order either to set down a marker about their privacy or to protect their family or to have the record set straight on a point of accuracy.
12. The Commission has also always recognised that it takes courage for people to complain and take on a newspaper or magazine. That is why our procedures are simple and private - and also why we crack down hard on any newspaper that attacks a complainant for making a complaint, something which happens only extremely rarely.
13. Against that background, the insuperable problem with pro-activity and the use of own volition complaints is that it would inevitably turn this service - free and accessible to everybody - into a two-tier system. In other words, ordinary people would still have to summon up the courage to make a complaint — because it is unlikely that their concerns would ever be the subject of a third party complaint; yet public figures embroiled in a high profile dispute with a newspaper could expect the PCC to take action for them on the back of a third party complaint. But such complainants are those with more means than most - including solicitors or press offices - of making a complaint. If some public figures don't mind complaining, why should others expect a different service?
14. The other result of such a system, of course, may well be to discourage those who do make complaints at the moment from doing so. In order to protect their family, the Prime Minister and Mrs Blair have made a number of complaints to us, as have other public figures. If the PCC was taking complaints up on its own behalf, or responding to third parties, shouldn't they have been able to expect the

Commission to do it for them? Why should they have to complain themselves?

### Politicising the PCC

15. The pressure on the PCC to raise complaints on its own behalf, or on the back of a third party, inevitably occurs when a public figure - and often a politician - has been embroiled in a dispute with a newspaper or magazine. This highlights one enormous danger of such a system - that it would end up politicising the Commission.
16. On one scenario, imagine a story in a newspaper about the private life of a member of a Cabinet. The PCC decides to raise its own complaint and investigate. At the very least that might be construed as a political decision - and one that puts any system of regulation on a very slippery slope. Next week there is a story about a member of a Shadow Cabinet. In order to maintain some form of political neutrality, the Commission then takes up that complaint. The net result of that is a Commission which - in order to maintain its impartiality - starts investigating any story which appears about a politician, because it cannot stop once it has started.
17. The result of that is something the PCC has always fought strenuously to avoid — that the PCC becomes a *Politicians* Complaints Commission, or indeed a Press Control Commission which is there to avoid politicians and other public figures having to take on newspapers themselves.

### From complaints - to control

18. In order to avoid charges that it was running a service simply for high profile public figures, the PCC would have to make much wider use of own volition complaints - taking up cases where ordinary members of the public find themselves under newspaper scrutiny.
19. This would inevitably mean having to establish a wide ranging monitoring exercise, in which we were looking for stories about the private lives of ordinary people.

20. This leads to another problem. The figures set out in Sections A and C show that the majority of cases of intrusion into privacy raised by ordinary members of the public are not about national newspapers - but about the regional press. This is, in many ways, inevitable: local and regional newspapers quite frequently include a good deal of material about local figures, about those appearing in Court cases, about Councillors and so on. Yet how could the Commission ever put itself into the position of monitoring over 1,300 regional titles, and hundreds of magazines as well?
21. The answer is that it could not - without putting in place an Orwellian system of press monitoring and then seeking information from ordinary people to assess whether there was a prima facie case of intrusion into privacy. It would therefore inevitably have to stand by its usual procedures - and expect people with a grievance about a local newspaper to complain directly. The Commission would then remain open to the charge that it operated one system for the rich and famous and one for everybody else - precisely the argument that is consistently and rightly made about a privacy law.

#### The right not to complain

22. The Commission has always recognised that some people have very good reasons for not complaining - and must therefore have the right *not* to complain.
23. Part of the reason for this is that there are two sides to most stories about prominent individuals - particularly celebrities, many of whom court publicity, even if the end result appears to us to be intrusive. In fact, because of the success of the Code, there are very few cases which arise where there is an intrusion into privacy without some potential defence by the newspaper - either of consent or public interest. The unfettered use of third party or own volition complaints would air that defence in public — even if it was unwelcome to the individual involved.
24. If the PCC was raising its own complaints about high profile public figures, the Commission would have to recognise that in some cases its actions would be extremely embarrassing. Take two examples.

- A story about the private life of a Government Minister appears in a Sunday newspaper - planted there by somebody else within Government. The Minister knows that and therefore does not want to complain. Does the Commission over-rule him and insist that the background be made known? Does it intrude further into his private life? It receives a third party complaint. Does it investigate it - and then reject it, causing the individual in question extreme embarrassment? However, if the Commission was making wide use of own volition complaints and decided NOT to raise its own complaint in this instance, wouldn't others infer something from this? Wouldn't the industry, too, think that the Commission was only raising complaints where it had already made its mind up in advance that the newspaper was guilty of a breach of the Code - but didn't do so on the majority of occasions when there was a legitimate defence? The Commission could also be open to the charge from the competitors of that newspaper that it was showing undue lenience on a particular title, placing the PCC in a position it has always firmly avoided - in the middle of the competitive battle between newspapers.
  - A picture of a well known celebrity, sobbing as she arrives to attend the funeral of a relative. It looks at first sight as if it is a paparazzi picture and publication is intrusive. The Commission receives a third party complaint and decides to investigate, but finds out that the picture was posed and the celebrity well paid for it. Does it make the circumstances clear - and embarrass the person who was after all acting legitimately (if cynically) to pose for a picture - or does it hush up its findings? If it did the latter that would be to the detriment of the newspaper, who would have had to endure the opprobrium of the PCC launching its own investigation - with attendant publicity from the newspaper's competitors - without the reasons for its acquittal ever being made clear.
25. A further point arises from the possibility that the PCC could be caught by the terms of the Human Rights Act. By raising a complaint about an article on someone's private life without their consent, the Commission might well end up being accused of intruding into their privacy - in breach of the legislation, and facing legal action as a result.

26. All these points underline the fact that people have a right not to complain - a right we would be taking away from them if we were regularly to take up third party complaints, or raise them of our own volition.

#### The right not to co-operate

27. There is an allied issue to this. The Press Complaints Commission cannot investigate a complaint without the co-operation of those involved: only with such co-operation can we ascertain all the facts relating to a particular article and then adjudicate. That is how we can make a voluntary and non-legalistic system - without powers to subpoena evidence, call witnesses and take statements on oath - work. When we get a complaint we are assured of co-operation.
28. What happens if we decide to raise a complaint about something - and those involved are not prepared to co-operate with us? We cannot compel them to do so, and without evidence cannot investigate. The Commission is then left unable to adjudicate.
29. Exactly this set of circumstances arose over the issue of the alleged harassment of Mary Bell's daughter following publication of *Cries Unheard*<sup>44</sup>. In the clamour that surrounded this, nobody - including the police and social services - was able to present the Commission with any facts which it could investigate. Calls to each of the major newspapers received the reply that they were all abiding by the Code - something we had no reason to doubt. Where could the Commission take the complaint from there - without compelling social services to co-operate, something we could only do with statutory powers?

#### Conclusion

30. The problems associated with the use of own volition complaints are many and varied. There are some who argue that it is something the Commission should do from time to time. But as set out in paragraphs 9-21 above, it would be impossible occasionally to raise

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<sup>44</sup> June 1998. Some of these issues are dealt with in the adjudication on the issues arising from Clause 16 of the Code on payments to criminals (Report 43).

only one or two specific complains, without sliding into a more general system of monitoring and ultimately control.

31. It was *never* intended that the PCC should seek to control the media by deciding what it would investigate of its own volition — nor should it in a free society. It *was* intended, however, that the PCC should not repeat the mistakes of the old Press Council - whose investigations into complaints without complainants meant that those members of the public with a genuine grievance often obtained only limited and much delayed redress.
32. Although the Commission does, of course, have a very powerful role in raising standards of journalism - through our adjudications, through guidance notes and so on - on a day to day level the PCC is, at its heart, a dispute resolution procedure which depends on people bringing their disputes to us. It would involve an enormous practical - and philosophical - change for the PCC to go looking for disputes to resolve. That would make it a controlling Commission, protecting people in the public eye, not a complaints Commission working for the public.

### E (5) Media monitoring

1. The Press Complaints Commission was established with the aim of dealing with complaints from individuals affected by breaches of the industry's Code — as set out in Section E4 above. It was not set up as a body to raise its own complaints (except in exceptional circumstances) — and so the PCC has never had to put in place a comprehensive programme of media monitoring.
2. There would be practical problems in doing so. There are over 20 national daily and Sunday newspapers; over 1,000 regional and local newspapers in England and Wales; 180 titles published in Scotland and Northern Ireland; and at the last count over 8,300 magazine titles. In addition, there are a mushrooming number of newspaper websites over which the PCC has jurisdiction. To monitor all these for potential breaches of the Code would be an impossibility.
3. There are philosophical objections as well. There is a perilously thin line between monitoring a free press and seeking to control it, as judgements about the issues, personalities and stories to monitor would be extremely subjective. That is not the job of the PCC which is why we have never sought to establish a media monitoring system.

#### Raising standards

4. However, the Commission also recognises that it *is* its job to administer the industry's Code and to do what it can consistently to raise standards of newspaper reporting. In 1998, the Commission decided that there was therefore a case for undertaking an occasional — and private — monitoring project to decide whether the Commission needed to take action on newspaper standards in defined areas. This comprised two areas:
  - general monitoring exercises; and
  - exercises on specific areas relating to vulnerable groups of people.
5. With the general monitoring exercise, national daily and Sunday newspapers were scanned by a member of the PCC's staff and stories and photographs that looked as if they might raise issues under the Code were considered for informal and private investigation. Some



regional newspaper titles, some publications in Scotland, and some magazines were also scanned. When it was clear that none of the individuals directly involved in the stories were going to complain, a private and informal letter was sent to the newspaper or magazine concerned explaining the nature of the exercise and inviting the publication to comment.

6. Nearly all the approaches made by the Commission received very helpful responses explaining the background to the story and setting out how the publications had considered the matter under the Code. In virtually every case publication could be justified; but in a handful of cases where no adequate response was offered, the publications concerned without exception agreed to bear the Commission's concerns in mind in preparation of future articles. A note summarising the findings of this exercise is set out in Appendix XXV.
7. This exercise has been repeated at occasional intervals since then. On each occasion the Commission — which has reviewed all the papers — has concluded, from this limited exercise, that there is no identifiable problem of substantial numbers of breaches of the Code going unreported to the PCC. The Commission will continue this private initiative at its discretion in the future.

#### Specific monitoring exercises

8. More importantly, the Commission has deployed this procedure on a number of occasions relating to specific issues — partly to assess general standards of reporting, and again to see whether individuals in particularly vulnerable positions may not be complaining.
- In the first case, the Commission looked at newspaper coverage of the Paddington Rail Disaster in 1999 — as there had been some allegations at the time of previous large-scale tragedies that the press was unjustifiably intrusive at times of grief and shock for large numbers of individuals<sup>45</sup>. Again, the Commission reviewed the papers and was content that nearly all the coverage it examined appeared, in the light of responses from editors, to have been carried out in accordance with the Code.

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<sup>45</sup> The role of the Commission during Dunblane and other tragedies is covered in Section A4.

- The Commission has also been concerned over the years to seek to improve reporting standards in matters relating to mental health (see Section D2). Accordingly, it undertook a short monitoring survey over a six-month period in 1999 to assess standards in this area. The Commission noted that reporting appeared to be more balanced since the publication of its guidance note, and the work was useful as background to the meeting with MIND and others involved in the care of those with mental illness. Indeed, MIND itself commented about the trend to more balanced reporting at its 2001 Press Awards:

More articles than ever before have been short-listed for the Journalist of the Year Award, and very few articles appear on the Bigot of the Year Award shortlist. This points to a gradual improvement in media reporting of mental health issues. The shortlist includes staff reporters on national broadsheet and tabloid papers, and local papers, consumer magazines, and freelancers.

- Another group of people who are in a particularly vulnerable position, mainly with regard to individual privacy, is the transgendered community. Following a number of complaints in this area, the Commission decided privately to monitor this specific issue for a short time as a precursor to meetings with transgender organisations such as the Beaumont Society. That has proved a useful initiative, and although the Society — like MIND — found there was still some scope for improvements in reporting, the PCC's interest and involvement with these particularly vulnerable groups of people was welcomed by those involved with their care and support.
  - The Commission also undertook an exercise on matters relating to refugees and asylum seekers. Again, the information was of use in meetings with the Refugee Council and others, where the complaints process was explained in more detail.
9. The Commission will continue to undertake these private monitoring exercises, where it is appropriate to do so and where there is concern that a particularly vulnerable group of people may not be making use of the PCC's services. The information will be used to help us ensure that such groups of individuals are made more aware of the complaints procedure and the benefit of complaining.

## E (6) Accountability and scrutiny

1. Issues of accountability and openness are inevitably different in a system of self-regulation to a system which is governed by statute and based on legal controls. This arises partly because of the source of funding, and partly because of the nature of the regulation itself. However, this short Section outlines how the Commission seeks to be accountable and transparent, and the scrutiny that it receives.

### Accountability to our customers

2. One of the main ways in which any complaints handling body should be accountable is to its customers. To that end, we ensure that everyone who complains — no matter who they are — receives a clear understanding at the start of the process of:
  - what our role is, and what outcome they can expect;
  - how the process works;
  - how long it will take; and
  - the standards of service they can expect.
3. Much of this is laid out in a leaflet on *How to Complain*, which is in Appendix II, including the service commitments in the *Complainants Charter* set out in Section A5.
4. When the Commission reaches a decision on a complaint, it also gives clear reasoning for its decision. This is set out in a letter to both the parties. Complainants who take issue with the findings are told that the Commission will happily reconsider any complaint, if the complainant can show either that the Commission has misunderstood something or can produce new evidence.
5. We set out elsewhere how we seek to measure our success in these areas, and each year we publish openly (unlike some of the statutory regulators) in our *Annual Review*:
  - details of the number of complaints received and their outcome;
  - the time it took to deal with complaints;
  - results of a customer satisfaction survey; and

- a report on how we measured up to the targets in our *Charter*.
- 6. Customers with a grievance about the procedure can complain to our Charter Officer, who will seek to see that our procedures have been followed. Ultimately, of course, any complainant can also seek a judicial review of our decision (see para. 17 below).
- 7. Members of the public also have an opportunity to make their input into the terms of the Code. Anyone can make a suggestion about possible changes, and the Code Committee will consider them carefully. More detail on this is contained in Section E2.

#### Accountability to the public

- 8. Each year, the PCC produces an Annual Review which is available to any member of the public on the website or direct from the PCC. In addition copies are mailed to MPs, MSPs, CABx, public libraries and other interested parties to ensure that any individual can access information about the PCC s performance and practice.
- 9. Key to the issue of public accountability is, of course, the lay majority on the PCC who are there, among other reasons, to represent the interests of the public. Lay members dominate the Commission, its Sub Committees, the weekly complaints meetings and the setting of a Budget — as well as the Appointments Commission.

#### Accountability to the industry

- 10. In a system of self-regulation, it is obviously crucial that the Commission should be accountable to, but not controlled by, the industry. Accountability in this area means that the industry should ensure the PCC is doing the job it was set up to do — and covers such matters as the administration of the Code, finance and an overview of how the PCC is serving complainants.
- 11. Accountability with regard to finance springs from annual budget meetings between the PCC Chairman and Director and the Pressbof Board, as well as quarterly reporting of expenditure figures. The Chairman and Director also attend Pressbof Board meetings, when

invited, to report back on the work of the Commission — for instance at the time of the publication of the Annual Review.

12. There are other forums of liaison between the industry and the Commission. The Chairman and Director both sit in an ex-officio capacity on the editors Code Committee; and the Chairman of the Code Committee sits, in turn, as an ex-officio member of the Commission.
13. Commissioners and members of staff of the Commission also seek regularly to attend industry events — not least to report on the development of the Code — and answer questions about the Commission's work.
14. It needs to be emphasised that none of this entails any incursion into the independence of the PCC. What it does ensure is *both* that the industry is satisfied the Commission is working to protect the public in the independent and impartial manner in which it was set up and that editors and publishers keep up to date with the way in which we are applying the Code and, consequently, raising standards incrementally.

### Scrutiny

15. The PCC, although not a statutory body, is also subject from time to time to the scrutiny of Parliament and of the Courts.
16. This inquiry is a good example of that. The Commission welcomes it as a chance to demonstrate its service to the public and the way in which the Code has raised standards — and will be happy, at this time and any others, to appear before the Select Committee to answer questions.
17. Similarly, the PCC works well with the officials in various Government Departments — principally the Department of Culture, Media and Sport, but also the Home Office, the Lord Chancellor's Department and at times the FCO — in answering questions they may have, and working in partnership with them to sort out problems (see Section B5).

18. Furthermore, while it has never been established whether or not the Commission is subject to the jurisdiction of the Divisional Court, the PCC will always readily answer for its procedures and decisions on an action for judicial review brought by a complainant. The PCC's procedures are therefore subject to the scrutiny of the Courts, and accordingly are framed in accordance with the rules of natural justice.
19. It is interesting to note that the PCC has only been taken to judicial review three times in twelve years — and one of these cases was withdrawn before a final decision was reached.
  - In the first case, the PCC was taken to review in 1995 by serial killer Ian Brady, after the Commission decided not to censure the editor of *The Sun* for publishing pictures of Brady in the grounds of Ashworth Hospital<sup>46</sup>. Brady's complaint was rejected by the Courts at each stage of the judicial review process and ended up finally in the Court of Appeal in September 1996. In finding in favour of the PCC, Lord Woolf, then Master of the Rolls, made it clear that the Court endorsed the Commission's common sense approach to decisions under the Code of Practice rather than any alternative narrow technical interpretation.
  - The PCC was not taken again to review until March 2001, when the TV presenter Anna Ford sought review of a decision by the Commission that pictures of her taken on a public beach in Majorca were not an intrusion into her privacy. The Court again backed the PCC, and in a strong ruling in July 2001 clearly endorsed the procedures it had deployed in reaching its decision. There is more detail on the findings of Mr Justice Silber in this case in Section C5.
  - A third case was brought in the summer of 2000 by complainants whose complaint had been rejected. The single Judge refused leave to go to the Administrative Court and before an appeal against that decision could be heard the complainants withdrew their application.
20. The PCC is therefore clearly and willingly subject to the scrutiny of the Administrative Court if aggrieved complainants wish to complain about the procedures we deployed in investigating their complaint.

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<sup>46</sup> *Kaye v The Sun, Report 31*

Open meetings and minutes of meetings

21. It is sometimes suggested that the PCC should hold meetings in public, or publish minutes of its meetings. There are insuperable problems in doing so, because most of the complaints the Commission deals with at its meetings relate to intrusion into privacy and therefore involve substantial amounts of highly personal detail. The confidentiality of these proceedings is one of the strengths of our system over the very public manner in which legal actions are fought out. It would therefore be quite wrong of the PCC to open its meetings up to third parties. The minutes of the meetings record decisions that are taken. All of these are published in the Commission's quarterly bulletins, so the minutes contain no material — other than the routine matters associated with company law - that is not made public in any case.

Conclusion

22. Although a non-statutory body, the PCC can be seen to be open and accountable — and subject, too, to degrees of scrutiny appropriate to a self-regulatory organisation.

**SECTION F**  
**THE EUROPEAN AND INTERNATIONAL**  
**CONTEXT**





### **F (1) The PCC and self-regulation in a European context**

1. The United Nations Development Report of 2002 highlighted the vital importance of a free and independent press to spreading democracy. It presented self-regulation as the most obvious mechanism by which, simultaneously, restrictive state controls could be avoided and higher standards of professionalism and responsibility could be promoted. This Section looks at self-regulation of the PCC first in a European perspective, and then in a Commonwealth one.

#### **The European tradition of self-regulation**

2. There is a long history of press self-regulation in Europe. The Press Council of Norway was set up in the 1930s and the Swedish Press Council has been in operation for over eighty-five years. The PCC, therefore, fits into a well-established European tradition of voluntary regulation.
3. Moreover, there can be little doubt that the tide of opinion in Europe is pulling increasingly in favour of self-regulation of the press. In the last five years, independent Press Councils have been established in Slovakia, Bosnia and Belgium, while in Slovenia, Serbia, Ukraine, Russia, Bulgaria and Ireland there are ongoing discussions regarding the establishment of self-regulatory institutions.
4. Indeed, there are now very few countries around the continent where, if self-regulation does not exist, there is no desire to set up a system of that sort. Recent developments are these:
  - In the Ukraine, a Journalistic Ethics Commission has recently been set up by the Independent Journalistic Trade Union to act as an independent regulator dealing with complaints and ethical issues.
  - In Ireland the industry and the government are keen to see the formation of a Press Council. This, however, will not be possible until the country's libel laws are reformed.
  - The Slovenian Journalistic Society has a press code that is based on the German model but has encountered problems with obtaining the

necessary funds to establish a Press Council. Negotiations remain ongoing.

#### Statutory control the exception, not the rule

5. Among EU member states only France and Portugal stand out as exceptions to the self-regulatory rule. Both countries operate stringent press laws. The French laws on privacy are particularly notorious —with the result that much of the press in that country is widely seen to lack robustness and some of it is, in any case, dependent on state subsidies. In Portugal the High Authority for the Mass Media is a government-run body that oversees the conduct of the press.
6. Of the nineteen Press Councils or similar bodies in continental Europe, only three are founded on statute — Denmark, Lithuania and Turkey — and those in Denmark and Lithuania are effectively self-regulatory because, while the law requires that there is a Press Council, it leaves its administration to the industry. Crucially, there is support for these systems from the press itself. However, Turkey provides a clear demonstration of why such an organisation can be dangerous (especially as it masquerades as independent).
7. The Press Council of Turkey is in effect a tool for the government to control the press and suppress opposition. It has also played a key role in the now discredited World Association of Press Councils (see Section F2), where its fellow members are state-run bodies from outside Europe, such as those in Bangladesh and Egypt.
8. There is general acceptance throughout Europe, however, that self-regulation is the best way to regulate the press and it is to true Press Councils that countries wishing to establish media self-regulation turn for advice and support.

#### Common characteristics

9. Press Councils do of course vary slightly from country to country to take into account different social, cultural and political considerations. Clearly a self-regulatory body that would suit a small country like Malta would not necessarily suit the UK, or vice versa.

10. Nevertheless, despite minor differences, the various independent Press Councils around Europe do share the same basic characteristics.
11. In particular Press Councils are independent from government, from other pressure groups and from the media. This is frequently achieved by the inclusion of members of the public on the Council. Indeed, as in the UK, public members make up the majority of the Council in Bosnia, Estonia, the Netherlands, Malta and Spain, while in Sweden there is an equal number of lay and press members.
12. Most European Press Councils are funded, at least in some part, by the industry that they are regulating. Some systems — such as in the UK and Norway — receive all of their money from the industry. Others — Germany and Finland for instance — are partly funded by the industry and partly by the taxpayer on a no strings attached basis. If there is external funding it is always only on the understanding that those who provide it play no role in the administration of the system or the decision-making process.
13. Most European Press Councils, like the PCC, see themselves as dispute resolution bodies — backing up that service with the power to issue critical adjudications.
14. Only the smaller Press Councils — with very low numbers of complaints - tend to accept third party complaints. The Councils of Bosnia, Catalunya, Lithuania, Estonia and Switzerland can technically examine complaints from third parties although in practice they seldom do. Other Press Councils, including the PCC, may examine cases from a third party where no individual is directly affected.
15. Similarly, own volition complaints are rare in Europe, although the Councils usually retain the power to institute them. Most recognise the difficulty inherent in examining a case when those involved do not wish to co-operate with the investigation. Press Councils have neither the desire nor the resources to begin monitoring the press through the use of own volition complaints.
16. It is significant that those countries with the longest tradition of press self-regulation, including Sweden, Norway, Finland, Germany, the Netherlands and the UK, all now have Press Councils that generally

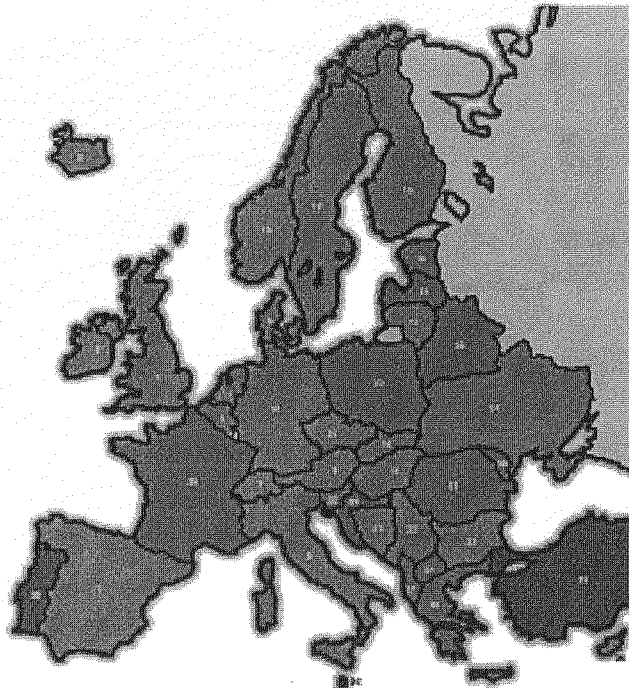
only react to complaints and do not tend to use third party or own volition complaints to launch investigations.

17. In contrast, the only Press Council that raises its own complaints regularly is that which exists in Turkey. The Press Council effectively utilises own volition complaints as a means of encouraging pro-Government reporting. It is, in other words, state control by the back door.

Complaints handling: the PCC compared with its counterparts

18. In numerical terms the PCC receives far more complaints than any other similar institution: indeed, in 2002 we received more complaints than all the PCs in Europe put together. This is perhaps unsurprising given the nature of the British press and the high profile of the Commission. Moreover, readership levels in the UK are comparatively high. At the lower end of the spectrum, in Bosnia just 10% of the population read papers regularly.

*Inset (next page). A map of Europe shows where self-regulatory Press Councils have been established, where they are being set up and where no such regulation exists. This underlines the clear tradition of, and trend to, self-regulation throughout Europe.*



■ Countries with self-regulatory Press Council or similar body, and those currently seeking to establish one

1 Spain, 2 Iceland, 3 Ireland, 4 UK, 5 Belgium, 6 Finland, 7 Luxembourg, 8 Italy, 9 Austria, 10 Germany, 11 Denmark, 12 Netherlands, 13 Norway, 14 Sweden, 15 Estonia, 16 Slovenia, 17 Slovakia, 18 Slovenia, 19 Hungary, 20 Croatia, 21 Serbia, 22 Montenegro, 23 Bulgaria, 24 Ukraine, 25 Czech Republic, 26 Cyprus, 27 Malta

■ Countries with no Press Council of any description

28 France, 29 Greece, 30 Greece, 31 Albania, 32 Romania, 33 Poland, 34 Bosnia, 35 Latvia, 36 Lithuania, 37 Azerbaijan

■ Countries with a government run or controlled Press Council

38 Portugal, 39 Turkey

**F (2) How the Commission helps other countries to develop self-regulation**

1. In 1997 and 1998 the World Association of Press Councils (WAPC) tried to establish a global code of ethics and a trans-border complaints authority to uphold it. This proposal — which emanated from Turkey - was strongly opposed by the PCC, and indeed many other Press Councils, which saw the idea as anathema to press freedom and the principle that self-regulation works best when applied at the local or national level.
2. The PCC pulled out of WAPC, and was soon followed by the Press Councils of Australia and New Zealand. The only democratic Government still to be involved with the Association is Israel, and, apart from that institution, WAPC now comprises solely state-run Press Councils and organisations, under the auspices of the state-funded Turkish Press Council and Supreme Press Council of Egypt.
3. The PCC thought that any association of Press Councils should be more concerned with promoting self-regulation in those places that wanted it than trying to establish an unnecessary scheme of trans-border complaints. It therefore encouraged the European Press Councils to come together to form a loose association — see F3 below — and has sought generally to offer advice and encouragement to any country exploring the benefits of press self-regulation.

**The Bosnian example**

4. One of the countries in which the PCC has been most closely involved is Bosnia and Herzegovina (BiH), where some form of statutory controls on the printed press was mooted in 1999.
5. The PCC was contacted by the Independent Media Commission (IMC), a body set up by the International Community to licence and regulate the broadcast media, and agreed to provide advice on how it might be possible to establish an independent, self-regulatory Press Council in the country.

6. The IMC had, in partnership with the six journalists associations of BiH, already produced a code of conduct, which they felt was appropriate for local circumstances, and had agreed on the formation of the proposed Council. Advice was, therefore, required on how to run a Press Council on a day-to-day basis.
7. Because of the obvious ethnic tensions in the country, the selection of a chairman was something of a stumbling block. The journalists associations eventually decided that it would be advantageous to have an international chairman who had experience of self-regulation and invited the then PCC Chairman Lord Wakeham to fill the post. On his retirement from the Commission, the Acting Chairman of the Commission Professor Pinker was appointed. He attends four meetings a year in Bosnia.
8. Since the BiH PC began dealing with complaints in 2001 the PCC has also helped in the ongoing process of complaints handling, giving advice on how cases might best be resolved and giving a detached opinion on complaints based on the information provided by the BiH PC's secretariat. Ultimately, however, it is only those on the ground in Bosnia who can assess the best way in which a mediation can be achieved.
9. The Press Council of BiH is generally well supported by the industry, politicians and the international community and has received funding from bodies as diverse as the Organisation for Security and Co-operation in Europe, the Swedish International Development Agency, the British Embassy in BiH and the EU.
10. The survival — and success — of the BiH PC is a great achievement for those wishing to underpin the fragile democracy in Bosnia. The PCC will continue to provide active support and guidance for as long as it is requested.

#### Central and Eastern Europe

11. In the past year the PCC has received a number of requests from Central and Eastern Europe for information and advice on press self-regulation. It is in this part of Europe where press freedom is most consistently threatened by stringent libel laws and suspicious



Governments and it is, therefore, of great importance that self-regulation be encouraged if the will exists locally.

12. In the Ukraine a small NGO, Charter-4, which is committed to raising standards of press conduct and encouraging the growth of media self-regulation, has acted in partnership with the Independent Journalistic Trade to set up a Journalistic Ethics Commission (JEC).
13. This Commission, despite opposition from politicians and media owners is already acting as a de facto Press Council, examining complaints and encouraging journalists to operate by the rules of its code of conduct.
14. The PCC was approached by Charter-4 to discuss the theory behind self-regulation and the practicalities of running a Press Council. In November 2002 the Acting PCC Chairman travelled to Kiev for further meetings with those involved. The British Embassy in Kiev is also providing support and funding for this project.

#### The British Government and overseas self-regulation

15. In fact, the involvement of British embassies and Government departments has been growing recently. For instance, the British Council in Sofia, Bulgaria approached the PCC in 2002 for advice on the establishment of a Press Council in the country. It emerged that the EU was financing a major project designed to improve professional standards in the Bulgarian media and that the first aim of that project was to set up a system of voluntary self-regulation for the media.
16. The Department for International Development has been funding a project to establish self-regulatory systems in two areas of Russia — Rostov-on-Don and Nizhny Novgorod. The project is being overseen by the Programme in Comparative Media Law & Policy (PCMLP), which is based at Wolfson College in Oxford. The Commission sits — at the PCMLP's invitation — on the advisory council for this project.
17. The PCC has spent some time with journalists, publishers and politicians from the regions involved in the scheme, talking about the practicalities of creating media complaints bodies, the writing of

Codes and how complaints are handled. In November of last year PCC representatives travelled to Russia to take part in a series of seminars on the subject of self-regulation in those regions. The project is ongoing and the Commission will give any further advice as necessary.

18. The Foreign and Commonwealth Office has also sponsored a major project in the Commonwealth, designed to promote Press Councils and other forms of self-regulation (see below).

#### Visits to the PCC

19. The Commission receives frequent visitors from overseas to the PCC, which allows us either to share information and experiences with our counterparts or to talk about the PCC to interested parties. In 2002, for example, the Commission had meetings with, among others:

- Flip Voets, the Secretary-General of the new self-regulatory Press Council of Belgium;
- the general secretary of the Norwegian Press Complaints Commission, Per Edgar Kokkvold;
- students from foreign universities (see Section D5);
- visitors whose trips are organised by the FCO and who are keen for more information about self-regulation (see Appendix XVIII for a full list).

#### Conferences abroad

20. The PCC's position as a leading and high profile Press Council leads to a number of invitations to address foreign conferences. Unfortunately the Commission cannot attend them all but in 2002 a PCC representative did speak in Cyprus on the subject of the Modern Media — the UK and Cyprus — Duties, Dangers and Deserts. The PCC also sent a paper to be presented at a conference in Latvia on the Freedom of information and the inviolability of the private life.

### F (3) The Alliance of Independent Press Councils of Europe

1. As the World Association of Press Councils (WAPC) began to venture down the dangerous path of trans-border regulation, the PCC realised that despite its links with WAPC (which soon came to an end), it had not had a great deal of sustained contact with other Press Councils of Europe.
2. The Commission's first move was to arrange a meeting with representatives of the Dutch Press Council (geographically and philosophically the closest self-regulatory body to the UK), who suggested that an alliance of similar European bodies might be profitable for all concerned. The PCC welcomed this suggestion and undertook to organise a conference at which to further discussions.

#### The London Conference of 1999

3. Subsequently, in June 1999, representatives from about 20 European Press Councils and Commissions as well as other key figures in the field gathered in London. Addresses were given by representatives from France, Sweden, Germany, Bosnia and Ireland.
4. Those present at the meeting decided to form a very loose knit alliance, which would provide a forum for the exchange of information and advice, and which would meet annually. According to its mission statement, this Alliance of Independent Press Councils of Europe is:

A loose-knit group whose members believe in the application of self-regulation, independent of Government, at a local or regional level and based on nations differing cultures.

The Alliance was formed so that colleagues throughout Europe can co-operate with each other through the exchange of views and information on a regular basis, but without the need for formal bureaucracy. Colleagues will aim to meet each year to discuss matters of mutual interest.

Participating countries agree that the writing of codes of journalistic ethics and their administration is the business of journalists and publishers, who take into account public feelings, and not the business of Governments.

They also agree that it is not possible to operate a universal code of ethics, and are opposed to the imposition of supra national codes and regulatory organisations, either at the European or global level.

Those participating in the Alliance will help to promote and support as much self-regulation a possible, in as many places as possible, so that local solutions can be provided to meet local needs.

5. Since its inception AIPCE has gone from strength to strength and has sought to bring in new members from around the continent when new Press Councils are established. Numerous issues of mutual interest — such as the impact of data protection laws, regulation of the internet and the implementation of European directives — are discussed at its annual meetings, which allow members to obtain a wider contextual understanding of European media regulation. Since London in 1999, conferences have been held in Bonn, Dublin and Malta.
6. AIPCE conferences are also now attended by interested parties from outside Europe, with observers from Israel and Japan attending this year s meeting in Malta.
7. Because the Alliance has no formal bureaucracy, contact between members and others interested in self-regulation has generally been on an ad-hoc basis. However, this has changed in the last year as a result of a PCC initiative which launched a new website for and about Press Councils, which was demonstrated to AIPCE members at its recent conference.
8. The new site — [www.presscouncils.org](http://www.presscouncils.org) — contains information and contact details about every known independent Press Council in the world. It is not only useful for the staff of Press Councils but also an excellent research tool for the growing band of students of self-regulation. The project is overseen by Professor Claude-Jean Bertrand of Paris, a world authority on media accountability systems.

The future

9. AIPCE will continue to act as a forum for debate and discussion and will be increasingly important as new Press Councils emerge and old ones develop.
10. In 2003 the Swedish Press Council, the oldest of the self-regulatory organisations in Europe, will host the annual AIPCE meeting. The following year, the Cypriot Code of Conduct Committee, one of the continent's newest independent Press Councils, will take the chair.
11. A list of those organisations that have participated in the Alliance of Independent Press Councils of Europe is in Appendix XXVI.

**F (4) Our work in the Commonwealth**

1. Outside Europe, the PCC's most significant international commitment is in maintaining contacts with Commonwealth Press Councils and advising Commonwealth countries wishing to move from restrictive press laws to a self-regulatory model. The trend in the Commonwealth is towards self-regulation and long-established press councils in New Zealand, Australia and Canada also serve as excellent examples of how things can be done.
2. This commitment has accelerated since the recent programme — organised by the Commonwealth Press Union (CPU) — to promote press freedom and self-regulation. This initiative was funded by the Foreign & Commonwealth Office as part of its wider project to support and advance the human rights of people in the developing world.
3. The CPU's project was based around a series of seminars that were held throughout the Commonwealth during 2001 and 2002 in Ghana, Kenya, Sri Lanka, South Africa, Sri Lanka and Barbados. Together with a seminar organised by the Australian Press Council the series was attended by 122 representatives from 39 countries. All were attended by PCC representatives — first Lord Wakeham and subsequently Professor Pinker.
4. The seminars established that while there was a strong desire for self-regulation in many countries, there were also many obstacles to achieving it. The press was often divided against itself and the funds needed to set up a self-regulatory Press Council were often lacking. Governments could be, perhaps unsurprisingly, often hostile to the self-regulatory ideal and civil society uncomprehending towards a new concept in consumer protection and dispute resolution.
5. In light of these problems the programme has been responsible for some important and gratifying developments and has seen complaints mechanisms established where previously there were none (see below). In Sri Lanka, for instance, the Government has been persuaded to amend the law on criminal defamation — inherited from the British — in order to allow a new self-regulatory body to flourish.

6. In all these places, and others, the PCC's policy has been to ensure that self-regulation was moulded to fit the individual country concerned and to encourage countries to develop their own code of ethical conduct, taking into account their distinctive civil traditions.

The conclusion of the project

7. The seminar series was brought to a close in London in November of last year. A report on the project, entitled *Imperfect Freedom — the case for self-regulation in the Commonwealth press* was launched at this final conference and its summary is contained in Appendix XXVII.
8. The report showed that while there is a well-established tradition of press self-regulation in some parts of the Commonwealth, in others it needs nurturing.
9. In the Eastern Caribbean a Code of Practice has been written by editors and a Press Council with a lay majority has now been firmly established to cover the territories of Barbados, Grenada, St Vincent, St Lucia, Dominica, Montserrat, Antigua, St Kitts-Nevis and the British Virgin Islands.
10. The Sri Lankan press has been working towards self-regulation since 1998, with the PCC helping when necessary. Now the Sri Lankan PCC — helped by the impetus of the CPU seminars — is operational and hopes to start taking complaints from members of the public in the near future.
11. Other notable successes have been witnessed in Kenya, Nigeria, Botswana and Zambia. In each of those countries Press Councils have either been tentatively established or have been proposed as serious possibilities. Their success will depend largely on continued support from the press and politicians locally.
12. Continued support from the CPU and the PCC is essential, and the new Councils will benefit from the [presscouncils.org](http://presscouncils.org) website, which will help them to keep in touch with established Press Councils and

obtain advice from experts<sup>1</sup>.The CPU also hopes to organise follow-up visits to countries where Press Councils have been set up or there are moves to establish such bodies.

Other developing world Press Councils

13. Aside from its work with the CPU, the PCC was approached in 2002 by the Foreign & Commonwealth office to help with the proposed establishment of an independent Press Council in Swaziland. Professor Pinker was subsequently invited to Swaziland to discuss the situation with politicians, the press, interested civic groups and the King. The project remains ongoing and it is hoped that a Press Council, the basis of which has been agreed, will be established within the next year.
14. The UN itself has recognised the importance of self-regulation to freedom of expression, concluding in a report in 2002 perhaps no reform can be as significant for making democratic institutions work as reform of the media Informed debate is the lifeblood of democracies <sup>2</sup>.
15. The PCC will continue to play its full part in achieving that.

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<sup>1</sup> See p. 213

<sup>2</sup> United Nations Development Report, 2002, p. 75





Concluding remarks

1. The PCC welcomes this review of privacy and media intrusion by the Select Committee, and has enthusiastically grasped the opportunity of making this submission to set out its service to the public, the ways in which it has sought to raise standards, and the comprehensive manner in which it has publicised itself.
2. Press freedom is not perfect — and self-regulation will never be perfect. What this submission has sought to do is to show how it is nonetheless preferable, above all from the point of view of ordinary people, to any form of legal control.
3. A great deal has changed since the Select Committee last investigated this area. The Code and the PCC's sanctions have been strengthened. The Commission's independence has been renewed. Procedures — endorsed by the Courts — have been streamlined to offer complainants a fast, free and fair service. A body of case law, particularly on privacy, has been established which has helped raise standards further. The Code has been embedded among a generation of journalists. A substantial public information programme — concentrating on the most vulnerable in society — is in place and expanding. And the PCC is now leading the way in Europe in terms of customer service and effective regulation. Above all, it is quite clear that standards of reporting have been substantially raised since the 1980s when the blueprint for the Commission was designed. And it is independent self-regulation — demonstrating the power of voluntary controls — that has done that.
4. Of course there will always be more to do, and the PCC is far from complacent. The Commission strives consistently to improve its services — and welcomes constructive and practical proposals for change. Similarly, the Code itself is a flexible document, which has grown organically in strength and authority, particularly in the last five years. The Code Committee will also respond positively to proposals for further change in the Code's provisions — as it has clearly demonstrated in recent years.
5. We would welcome the opportunity to give oral evidence to the Committee if that would be helpful to the progress of this important and timely inquiry.



## **ANNEXES**



**ANNEX 1: Press freedom and press responsibility -  
the power of self-regulation in practice**

*A summary of the issues involved with a personal view by Professor Robert  
Pinker*

The case for press self-regulation

1. Press self-regulation serves two main purposes. It protects press freedoms and it protects citizens from abuses of those freedoms by the press. Freedom of expression and privacy are both fundamental human rights but they can seldom, if ever, be treated as absolute rights because they so frequently come into conflict with each other. In seeking to reconcile these conflicts, regulatory bodies must give due consideration to the claims of the public interest but the nature of these claims varies according to who is advancing them. Editors, for example, may advance a public interest defence in order to justify an invasion of privacy. Governments may advance the same defence in order to restrict freedom of expression or access to information. Editors, for their part, associate the public interest with the extension of these rights.
2. The resolution of these conflicts of interest and interpretation, as and when they arise, is the central concern of all adjudicatory processes — whether they are being carried out by statutory or self-regulatory bodies. The fact that such conflicts of principle occur so frequently explains why some form of press regulation is necessary. The dilemma we face is not one of choosing between regulation and no regulation at all but of choosing between two different kinds of regulation — the statutory or the self-regulatory options.
3. With regard to the press, two powerful arguments can be advanced in defence of the self-regulation option. First, a free press is one of the fundamental institutional characteristics of a free society. Newspapers and periodicals are public watchdogs. They scrutinise those who exercise power in every walk of life. They help voters make informed choices and reach considered opinions. They frequently criticise Government policies and the conduct of political office-holders. For all these reasons, as the late Lord McGregor once observed, relations between politicians and the press tend at times to

be uneasy, suspicious and fretful . If they were ever to become more cordial there would be good grounds for questioning whether or not the press was doing its job effectively as a public watchdog.

4. Media freedom is never absolute. It is subject to many legal restraints which in the United Kingdom include laws of defamation, data protection, copyright, confidence and, more recently, the 1998 Human Rights Act. If, however, the state were to become continuously involved in regulating the day-to-day conduct of news gathering and publication in ways that went beyond these legal restraints, such regulation would eventually become synonymous with statutory censorship of the printed word. Relations between Government and the press would become openly confrontational or abjectly conciliatory. And since it would be impossible to regulate the internet effectively the whole exercise would swiftly be rendered pointless.
5. Secondly, the case for self-regulation rests on the premise that, in complex democratic societies, self-imposed rules will carry a greater moral authority and, consequently, work with greater effectiveness than externally imposed legal rules. Self-regulation, at its best, works well because it is accessible to everyone, rich and poor alike. It is fast and flexible in its conduct of business. With the appropriate institutional safeguards it operates independently of all special interests and at no cost to either the taxpayer or the complainant.
6. The case for self-regulation, however, must be defended not only on grounds of general principle, but tested with regard to its practical effectiveness. In the United Kingdom, responsibility for meeting these criteria is shared between the Press Complaints Commission and the press itself.
7. In this short paper we describe how these responsibilities are shared and how the Code is designed to help in the reconciliation of conflicting rights and claims. We go on to review the effectiveness of the Commission s sanctions and its procedures for resolving complaints. We conclude with a general evaluation of the Commission s effectiveness over the past ten years.

The division of responsibilities

8. Neither a statutory nor a self-regulatory system could work effectively without a very high degree of voluntary compliance. Since a self-regulatory system is entirely dependent on voluntary compliance it is imperative that such compliance should become as widespread as possible. A self-regulatory Press Complaints Commission like ours only works effectively if its Code of Practice is firmly based on the civic traditions and customary values of the general public and the industry which it regulates. These values are, in turn, underpinned by their attachment to more general principles of ethical conduct and formal doctrines of natural rights and duties.
9. The business of self-regulation is, however, a highly practical activity. Regulators have to apply general principles — which often conflict with each other — to specific cases as they arise in every day life. The Code of Practice, which the Commission administers, provides the general framework within which these principles can be put into practice.
10. The British system of press self-regulation is based on a clear-cut, but complementary, division of responsibilities between the industry and the Press Complaints Commission. The Code of Practice belongs to the industry which is responsible for upholding its requirements and keeping it up to date. The Commission is responsible for administering and enforcing the Code.
11. This division of responsibility dates from 1991 when the Commission's first Chairman, Lord McGregor, insisted that the Code should be written by a small committee of editors and publicly endorsed by the industry. Since then, the editors' Code Committee has kept its requirements under continuous review and updated them in response to changing needs and circumstances. These requirements include a general obligation to uphold the Code not only to the letter but in the full spirit. A further requirement states that the Code should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it prevents publication in the public interest.



The Code of Practice

12. The Code of Practice provides clear guidelines on how the right to freedom of expression must be balanced against other rights, including privacy and considerations of public interest. It upholds the public's rights to know and sets out a number of qualifications that impose responsible limits on that right. In this respect, it should be noted that when the provisions of the European Convention on Human Rights were incorporated into UK law, it was not deemed necessary for the industry to make any changes to the Code.
13. Article 10 of the Convention upholds the right to freedom of expression to hold opinions and to receive and impart information and ideas without interference by public authority. This right is now incorporated into United Kingdom law. It should also be noted that both the right to freedom of expression and to privacy are made subject to various qualifications relating to a consideration of the public interest. This includes such matters as the protection of national security and public safety, the prevention of disorder or crime, the protection of public health and morals and the protection of the rights and freedom of others.
14. The Code's definition of the public interest includes:
  - i) detecting or exposing crime or a serious misdemeanour;
  - ii) protecting public health and safety;
  - iii) preventing the public from being misled by some statement or action of an individual or organisation.
15. In cases involving children, editors must demonstrate an exceptional public interest to override the normally paramount interest of the child. In cases involving privacy intrusion, the right to privacy must be balanced against the right to free expression and the claims of the public interest.
16. The first two sub-clauses of this definition seldom give rise to serious problems of interpretation. It is the third sub-clause that often gives rise to disputes and is frequently invoked by editors as a prima facie public interest justification for intrusion into people's privacy.

17. Public figures, and in particular politicians, invariably put their own privacy at risk when they make pronouncements on moral issues which will affect the way in which ordinary citizens live their private lives and conduct their personal relationships. Members of Parliament, and other legislative bodies, have as much right as anyone else to comment on such matters but, when they do, their statements carry a special significance because they are in a position to recommend and introduce changes in the boundaries between those aspects of moral behaviour which are subject to legal sanction and those which are not. In more general terms, all public figures put themselves at risk of press enquiries into the circumstances of their private lives when what they say and do in public seems to be inconsistent with what they do in their private lives.
18. Nine of the sixteen Clauses in the Code cover issues of a kind which allow editors to advance a public interest defence in justification of their actions. These issues include privacy intrusion, harassment, reporting on children, the use of listening devices, access to hospitals, the identification of innocent relatives and friends, misrepresentation and subterfuge, and payment for articles. A public interest defence cannot be advanced with regard to the identification of children involved in sex cases.
19. Clause 3 of the Code defines privacy in the following terms:
  - i) Everyone is entitled to respect for his or her private family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent.
  - ii) The use of long lens photography to take pictures of people in private places without their consent is unacceptable. **Note** — Private places are public or private property where there is a reasonable expectation of privacy.
20. There are other parts of the Code which touch on issues related to privacy intrusion. They relate to matters including harassment, which can be seen as a protracted form of privacy intrusion, the protection of people receiving medical care and people suffering from grief and shock, and for other vulnerable people including children, victims of

sexual assault, and the innocent relatives or friends of those who have been convicted of crime.

21. The stringent and wide-ranging requirements of the Code recognise how deeply hurtful unwarranted privacy intrusion can be to the individuals affected. They also take account of the way in which these intrusions can affect innocent friends and relatives. Privacy intrusion was the issue that caused the Government of the day to establish the first Calcutt Committee of inquiry and privacy continues to hold a salient significance in the work of the Commission today.
22. Reconciling the right to privacy and the right to freedom of expression will always be a complex and difficult exercise because privacy is such a paradoxical concept. People can only come to appreciate the value and nature of privacy by growing up in a society. In order to become sociable, however, people have to accept limits on their privacy. Privacy is not, therefore, an absolute and nor is the right to invade it. This is a dilemma that all members of a society have to live with.
23. In recent years the Code's requirements on privacy intrusion have been made more stringent. The Commission, for its part, has given more focus and refinement to the questions it asks when considering all privacy complaints. These questions include whether the disclosures complained about are already in the public domain, whether they raise issues of genuine public interest, and whether the past behaviour of the complainant has, in any way, compromised their right to privacy. In all such cases, the Commission seeks to establish whether or not the disclosures in the article complained about are proportionate to the information already in the public domain. With regard to stories about the children or other relatives of public figures, the Commission asks whether or not they would have been published at all if the familial links not existed. Complainants who have previously revealed details of their personal lives do not necessarily forfeit their future rights to privacy.

#### The use of sanctions and other effective remedies

24. The Lord Chancellor and some judges have, from time to time, suggested that the use of financial sanctions would enhance the

credibility and effectiveness of self-regulatory Councils. It is the Commission's view, however, that the power to impose fines would change the whole character of self-regulation and, paradoxically, reduce its effectiveness.

25. Voluntary compliance is the real strength of the self-regulatory system. The effectiveness of a self-regulatory Council should not be judged by reference to the frequency with which it feels obliged to impose draconian financial sanctions. Indeed, the most likely response of the wealthiest publishers would be to treat such fines as an irksome but necessary part of their running costs — rather in the manner that wealthy car-owners treat their parking fines.
26. We have found, for our purposes, that the requirement to publish a critical adjudication in full and with due prominence is an entirely sufficient sanction. So far, the newspaper and periodical industry has given one hundred per cent support to the Commission and its administration of the Code.
27. No newspaper or periodical has ever refused to publish a critical adjudication. Some critics suggest that they are not surprised to learn that editors obey this requirement since it imposes a sanction that costs them nothing in financial terms. Our files of correspondence with editors facing the prospect of a critical adjudication suggest otherwise — especially when they are convinced that they have not breached the Code. They frequently invest considerable time and effort in defending their actions and sometimes they go on to appeal against a critical adjudication. Editors do not like losing a case. They do not like having to publish a critical adjudication which reflects adversely on their professional judgement and competence. Least of all do they like it when competitors also report their breach of the Code with suitably self-righteous comments.
28. In recent years the Commission has developed two complementary procedures for the resolution of complaints. Some are resolved by means of informal conciliation and others go all the way to a formal adjudication.
29. The extent to which editors voluntarily comply with Code requirements is clearly demonstrated by the fact that over ninety per

cent of all the complaints we receive which raise a prima facie breach of the Code are resolved informally to the satisfaction of the parties involved. They are resolved through the intervention and mediation of the Commission's complaints officers — or they are not pursued. Only about three per cent of complaints have to be taken to full and formal adjudication. This is either because there are prima facie grounds for believing that the breach is potentially so serious that an informal apology, published letter or a voluntary correction would not be a sufficient remedy or because the editors concerned are convinced that they have not breached the Code and that a formal adjudication will vindicate them. The extent to which we can rely on such voluntary compliance and correction explains, in large part, why it takes us, on average, 32 working days to conclude a complaint.

30. All Commissioners receive draft recommendations on the outcome of informally resolved complaints before they are formally adopted. They may, if they wish, ask to see the relevant correspondence, request a further review, or recommend that the complaint be taken forward to a formal adjudication.
31. A tariff of financial sanctions would undoubtedly slow down the process of resolving complaints. Moreover, there is no evidence that complainants are seeking financial compensation. They want the editor to admit that he or she got it wrong. They want an apology, a correction or a published letter. They know when they come to us for redress of grievances that it is a cost-free service. They hope, in addition, that their complaint will be dealt with swiftly and, in that respect, they are rarely disappointed.
32. When the Commission started work in 1991, its relations with many editors were highly confrontational. Every complaint was the subject of prolonged negotiation and disputes. Over the years they have become much more willing to make voluntary corrections and apologies for breaches of the Code. This change in editorial attitudes provides a crucially important measure of the extent to which the Commission and the industry have created a new climate of conciliation and voluntary compliance in the resolution of complaints.
33. Other critics have argued that the Commission's increasing use of conciliation and the growth of voluntary compliance clearly indicates

the extent to which it is cosyng up to the press and the degree to which the industry s editors and owners have penetrated the inner working of the Commission . They go on to claim that even the Commission s majority of lay-members does not protect its independence from industry pressures.

34. These claims are without foundation. Voluntary compliance is not to be confused with cosyng-up . In the process of seeking informal resolutions through conciliation it is more often the case that editors feel that it is they who are being put under pressure by the Commission s complaints officers.
35. Reponses to the claim that the Commission is a good example of the way in which lay-members are captured by the industry they regulate are best left to past and present lay-Commissioners. Once appointed, lay and industry members alike serve as independent Commissioners. In their adjudication of complaints at Commission meetings, they rarely, if ever, divide into two opposing camps and it is extremely difficult to predict the outcome of their deliberations.
36. For all these reasons, we submit that the increase in the number of complaints resolved through informal conciliation and mediation has in no way prejudiced the independence of the Commission or weakened the rigour and stringency of its adjudications. On the contrary, this development clearly indicates the extent to which the great majority of editors are voluntarily abiding by the requirements of their Code of Practice. They are exercising their right to freedom of expression in a far more responsible way than was the case ten years ago — without the threat of financial sanctions.

#### Measuring effectiveness

37. Responsible self-regulation requires editors to use their discretion when deciding whether or not to publish a story or article that might prove to be in breach of the Code. Errors of judgement are bound to occur from time to time, although it is seldom difficult to spot the difference between genuine mistakes and intentional breaches of the Code. After allowance is made for genuine human error, three reliable and realistic measures can, in addition to surveys of user-

satisfaction, be applied in assessing the effectiveness of self-regulation.

38. The first of these measures is the willingness of editors to make voluntary corrections and apologies in appropriate cases. The great majority of complaints received are resolved in this way. The second measure is the incidence of breaches of the Code which are so serious or flagrant that they must be formally adjudicated. Only three per cent of complaints fall into this category. Flagrant breaches of the Code were commonplace before 1991. They rarely, if ever, occur today. The third measure is the willingness of editors to publish critical adjudications in full and with due prominence. In this respect, one hundred per cent compliance has been achieved.

### Conclusion

39. Much has been written about the Commission's adjudications in high profile cases involving public figures and other celebrities. Far less attention has been given to the great majority of adjudications involving so-called ordinary people. Almost no attention at all has been given to the thousands of complaints that have been resolved through the process of informal conciliation without any need for formal adjudication. They account for over ninety per cent of all complaints received raising a possible breach of the Code over the last ten years.
40. For these reasons, the Commission's success in creating a new climate of conciliation and conflict resolution has never been accorded the recognition that it merits. When relevant measures of effectiveness are applied across the whole range of the Commission's work, the true scale of that success becomes evident. Freedom of expression has been protected and the press has learned to exercise that freedom more responsibly. Most importantly, serious breaches of the Code occur far less frequently than they did ten years ago and when people do complain they receive a service that is readily accessible, cost-free, efficient and prompt in delivering a resolution or making an adjudication.

## ANNEX 2: Analysis of 1993 National Heritage Select Committee recommendations and action taken to implement them

### Introduction

1. Following its enquiry into privacy and media intrusion, the National Heritage Select Committee used the opportunity of its 1993 Report to make a number of recommendations aimed at strengthening the system of self-regulation of the press. It actually recommended replacing the PCC with a new Press Commission, but the PCC endured, and the newspaper industry adopted — and exceeded — many of the Committee's recommendations. The recommendations in the Select Committee therefore referred to improvements that should be undertaken by a Press Commission, but as it was never created this analysis will refer to the PCC.

### Editors and journalists employment contracts

2. *The Committee recommended that 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. It also thought compliance should be made part of every journalist's contract 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 [Paragraphs 62 and 82].*
3. The newspaper industry accepted this idea and such references to the Code of Practice are commonplace in the contracts of editors. Section B4 of this submission contains the results of an industry-wide survey into the extent to which this practice has penetrated the industry and shows virtually universal compliance with this recommendation. Regarding freelancers, the Committee's objectives have been met by the inclusion in the Code of a clear requirement that published material must comply with it no matter what the source — a point underlined in the Commission's adjudications<sup>3</sup>.

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<sup>3</sup> See *Noble v Jersey Evening Post (Report 57 2001)*, concerning a complaint about a published letter which contained some of the complainant's personal financial details. The complaint was upheld.



### Readers Representatives

4. *The Committee was impressed by the system of readers representatives — or ombudsmen — that it found on some American broadsheet newspapers. While not recommending that every newspaper should have one it did suggest that the idea should be considered. [Paragraph 65].*
5. Some newspapers — notably The Guardian, The Observer, The Independent on Sunday — do now have Readers Representatives. Others, like The Sun and the News of the World, have appointed former senior executives as ombudsmen to deal with readers complaints effectively. Others still — The Daily Mirror, The Daily Express, for example — have initiated corrections and clarifications columns to ensure swift redress for readers. All are variations on the idea of in-house self-regulation which is epitomised by a Readers Representative. The PCC strongly encourages such moves.

### Publication of PCC details in newspapers

6. *The Committee considered that the PCC should be as widely-known as possible and recommended that the address and telephone number of the PCC be published periodically by newspapers. [Paragraph 68].*
7. The newspaper industry accepted this proposal. All newspapers — national, regional, local — and magazines from all over the country regularly carry PCC advertisements free of charge. These adverts detail the service that the PCC offers and have generated hundreds of enquiries and formal complaints over the years, playing an essential part in keeping the Commission's profile high. PCC contact details are also listed in every telephone book in the country.

### Regional offices

8. *It was recommended that PCC offices should open in Wales, Scotland and the English regions to deal with complaints from those particular areas. [Paragraph 68].*

9. It was not thought that this extra layer of bureaucracy would be particularly helpful or efficient — particularly as the PCC is a very small body anyway. Analysis of the geographical distribution of complainants suggests that people are not put off from complaining because they have to write to an address in London<sup>4</sup>. Nonetheless, the PCC does operate its own Scottish Helpline — 0131 220 6652 — to assist with the cost of those calling from Scotland. Section D3 outlines how the PCC maintains a high profile in the regions.

#### A hot-line

10. *The Committee wanted editors to be aware of possible problems before publication, in order that they may take a more informed decision about whether or not to publish. It was suggested that the Commission therefore telephone editors on a hot-line to alert them about potential breaches of the Code, although this was not intended to develop into a system of prior restraint. [Paragraph 69].*
11. The Commission has been wary about intruding into any areas that put it at risk of developing a system of prior restraint. However, it does operate a Helpline for members of the public, and advises people how they can approach editors and how to frame their arguments using the Code of Practice<sup>5</sup>. The Helpline is manned during office hours and anyone needing advice at any other time can use our 24 hour emergency service.

#### Training

12. *The Committee recommended that the Commission should play a valuable role in ensuring that journalists are fully trained in the Code and in wider press ethics . [Paragraph 70].*
13. As detailed in Section D4 of this submission, every year the Commission undertakes a major programme of training journalists. Senior members of the Commission and its staff travel all over the United Kingdom to ensure that a new generation of journalists learns about the Code and the Commission while they are studying

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<sup>4</sup> See pp. 29-30

<sup>5</sup> See pp. 31-35

journalism. Knowledge of the Code is now a core part of the National Council for the Training of Journalists curriculum. This programme started following the last Select Committee report.

#### Research into public opinion

14. *Part of the Committee's idea for a new Press Commission was that it would be specifically charged with upholding press freedom. To this end the Committee recommended that it should periodically conduct research into public attitudes to the press, the effectiveness of the Code of Practice, [and] the press's wider role in society and the freedom of the press. [Paragraph 71].*
15. The PCC did not take on this additional role as a champion of press freedom and instead developed itself as an efficient dispute resolution service for members of the public. However, it has commissioned research into what the public thinks is important in a complaints body, who should fund the PCC, how many people have heard of the Commission and whether they know that its service is free. [See Appendix X].

#### Enquiries into issues of general public concern

16. *It was suggested that the PCC should initiate enquiries into issues of general public concern or into specific incidents and, where necessary, give advice on the principles to be applied. [Paragraph 71].*
17. In practice this is something that the PCC does from time to time through the use of Best Practice or Guidance Notes. It has done so on issues as varied as the reporting of major sporting events, mental health issues, Court reporting and the reporting of cases involving paedophiles. When such statements are made the Commission publicises them and they are permanently accessible on its website. The Commission also does raise its own complaints from time to time on matters of wide public interest such as payments to criminals or financial journalism. (For more detail, see Section E4, p. 183).

### Press monitoring

18. *The Committee said that the Commission should monitor the press on a continuing basis . [Paragraph 71].*
19. The Commission has set out in Section E how it undertakes specific, private monitoring exercises from time to time to satisfy itself that Code compliance is high on particular issues. However, this is informal and at the Commission s discretion — there are real dangers that any institution with broader monitoring powers would soon become a censorship body. In any case, the Commission — with its focus on delivering swift redress to ordinary members of the public — would be reluctant to see any of its resources diverted from its key task. Only a state-run and funded body — common in authoritarian systems of Government — could adequately undertake an exercise to monitor the whole of the press<sup>6</sup>.

### Third party complaints

20. *The Committee recommended that the Commission investigate third party complaints. [Paragraph 72].*
21. The PCC s position on this matter is set out in Section E4. It does have the discretion to take third party complaints but exercises it relatively rarely, for very good reasons. The Commission would strongly resist any attempt to compel it to accept all third party complaints.

### Case law

22. *The Committee thought that its suggestions in relation to third party complaints and monitoring would lead to an impressive volume of case law that would reduce the number of breaches of the Code. [Paragraph 73].*
23. In fact, the development of a very considerable volume of case law has been achieved effectively and with more benefit to the

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<sup>6</sup> See p. 192

complainant through the publication of adjudications from individuals who have complained. These lay down guidelines for the whole industry and have, over the years, raised standards: details of how this has been achieved are set out in Section C2 of this submission (pp. 86-106). Case law can easily be accessed by the search engine on the PCC website.

### Due prominence

24. *The Committee suggested that where factual errors and breaches of the Code had occurred, the Commission should be able to order the publication with due prominence of its adjudications and of a correction and appropriate apology . [Paragraph 74].*
25. The Code of Practice now says that significant inaccuracies must be corrected promptly and with due prominence . With regard to adjudications, it says that any publication which is criticised by the PCC must print the adjudication which follows in full and with due prominence . Incorporating this requirement for due prominence in the Code is an effective way of ensuring that it happens, because a failure to do so can result in another breach of the Code. As it happens, the Commission has never had to uphold a complaint that an editor did not publish a correction or adjudication with due prominence.

### Compensation and fines

26. *The Committee recommended that the Commission should have the power to award compensation to complainants, and to fine newspapers when they are adjudged to have brought journalism into disrepute . [Paragraphs 75 and 77].*
27. The PCC s position on this matter — and its very clear belief that not only would this be counterproductive but also misses the point of why people complain — is set out in Section E3 of this submission.

### Appointments to the Commission

28. *The Committee recommended that appointments should be entrusted to the appropriate representative bodies of the industry and have*

*regard to the need to appoint women and ethnic minorities. [Paragraph 79].*

29. The industry has reformed the appointments procedure far more thoroughly than the Committee suggested. The Appointments Commission now comprises four independent members and just one from the industry — the Chairman of Pressbof. Of the eight public members of the Commission, two are currently from ethnic minorities and four are women. This is dealt with in more detail in Section E1.

#### Journalists identifying themselves

30. *The Committee recommended that journalists should identify themselves when seeking an interview and suggested that copies of the Code be made available to people at the time the interview or photograph was being sought. [Paragraph 83].*
31. While there is no specific requirement in the Code for journalists to identify themselves, the Commission will consider it a breach of Clause 11 (Misrepresentation) if journalists allow a misleading impression of who they are to develop<sup>7</sup>. In practice, therefore, the Committee's objectives have been met. Regarding distribution of the Code, members of the public have round the clock access to it and information about how to use it. Copies of the Code are also widely distributed to journalists through the Society of Editors and others.

#### Times of grief

32. *The Committee commended the way that the police helped to shield relatives of deceased people or victims of crime from media intrusion and encouraged its further development. [Paragraph 32].*
33. The Police have continued to develop this important area of training. The Commission co-operates closely with them on such matters, for example by giving an annual talk at the Scottish Police College to Family Liaison Officers.

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<sup>7</sup> See *Faldo v The Sun*, Report 53.

Anti-social conduct

34. *The Committee recommended that all references in the Code to anti-social conduct should be deleted because of the difficulties of definition. [Paragraph 87].*
35. The Code Committee deleted such references in 1994.

Printing of the Code in minority languages

36. *The Committee said that consideration should be given to printing copies of the Code in other languages. [Paragraph 83].*
37. The PCC has exceeded this requirement by publishing not just the Code but a range of literature in Urdu, Bengali, Welsh, Gaelic and Chinese and other languages<sup>8</sup> as part of its commitments under the Complainants Charter.

Conclusion

37. In all the areas where suggestions were made about to how to improve the PCC s service — rather than those calling for a change in the whole philosophical basis of the organisation — the newspaper industry and the Commission reacted with vigour. Not only were most of the recommendations adopted but some were exceeded. Furthermore, as outlined in other sections of this submission, the PCC has constantly looked for imaginative ways of engaging with the public and making its procedures accessible and widely-publicised. It succeeds in doing this in ways that were not imagined ten years ago — and is committed to continuing to do so.

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See p. 32

### Annex 3: The PCC and discrimination

1. As Section A2 shows, there has been a steady rise in the number of complaints about discrimination over the PCC's lifetime. This does not mean that breaches of the Code are more frequent or that standards in the press are falling. But it does reflect the changing times and the growth of press comment — for obvious reasons — about matters to do with Islam, immigration and asylum seekers, and the willingness of more people to use the PCC to make their views clear when they disagree with a newspaper. It also reflects the fact that more lobby groups use the PCC as a mechanism to make their point against a newspaper, and encourage individual members to register complaints about particular articles. Because a large number of people often complain about the same thing it is often overlooked that the actual number of articles complained about is really quite small. It seemed useful to draw together some of these issues as an Annex to our substantive submission.

#### Strength of the Code

2. The Code itself — a document designed to set out the rights of the individual — contains in Clause 13 tough rules on the reporting of someone's race, colour, religion, sex or sexual orientation, mental or physical disability.
3. In particular, it says that the press must avoid publishing such details unless they are relevant to the story. It also protects individuals from prejudicial or pejorative references to any of these facts.
4. The Code has, in this area, been responsible for gradually raising standards of reporting. Because breaches of the Code are so rare it is easy to forget the pernicious attacks that some newspapers freely made on people on account of their race or sexual orientation as recently as the late 1980s.

#### Dealing with breaches of the Code

5. Nonetheless, breaches of the Code do — rarely — happen. When they do the Commission applies its normal procedures to try in the first



instance to reach an amicable settlement to the complaint. Examples of complaints under Clause 13 being resolved include:

- a newspaper that criticised a German woman for studying English art apologising to the woman and offering to publish a letter from her;
  - a newspaper apologising to a gay police officer for a prejudicial reference; and
  - a magazine, having included details of a woman's mental health problems in an article, later apologising and ensuring that the article was not re-circulated.
6. Only rarely does the Commission have to adjudicate on alleged breaches of Clause 13. However, it has:
- criticised an evening newspaper for pejorative use of language in an article about a Jewish businessman (*Bishko v Evening Standard, Report 40*);
  - censured a magazine for ignoring the Commission's Guidance Note on mental health (*Peck v Time Out, Report 40*); and
  - upheld a complaint against a local newspaper for including details about a teenager's mental health problems in an article about his mother's conviction for possession of cannabis (*A woman v Hastings and St Leonards Observer, Report 41*).
7. It is clear therefore that the Commission provides effective remedies on those few occasions that Clause 13 is breached.

#### The Code and general comment

8. There are some people who would like Clause 13 of the Code to be redrafted to include groups of people — which might include nationalities, political groups or religions.
9. The Code has never proscribed journalists from making critical comments about such groups. Indeed, any attempt to do so would arguably infringe the journalist's and the newspaper's right to freedom of expression.

10. Moreover, the Commission has never concerned itself with subjective matters such as what might be offensive or what might be in poor taste. These are matters that are left to editors — who are best placed to judge the sensibilities of their readers. Making judgements about something that has offended one group of people could put the Commission in the position of offending another group of people. This is not what the Commission was designed to do — which was to offer a dispute resolution service to people who had been victims of intrusive or inaccurate reporting.
11. However, the Code Committee has — as a result of representations from politicians and the public — looked several times at whether the Code might be amended to include rules on how journalists should refer to groups of people. Each time the idea has been dismissed as unworkable — no formula has been found that would protect legitimate comment and freedom of expression while at the same time addressing the concerns of those who wish to outlaw discriminatory comment about groups of people.
12. In any case, it is often true that people can complain under the accuracy Clauses in the Code about articles that they have also considered to be discriminatory. This was shown to good effect in the complaint from solicitors *Harman and Harman against the Folkestone Herald*<sup>9</sup> when the Commission took the opportunity to highlight the danger of inaccurate reporting of asylum stories creating a climate of fear and hostility not borne out by the facts.

### Raising standards

13. The fact that the Commission cannot adjudicate on general complaints under Clause 13 should not be mistaken for impotence or inactivity when it comes to dealing with objections to discriminatory reporting about groups of people. Section D2 sets out in some detail the lengths to which the Commission has gone to engage with representatives of minority groups who might be concerned by such reporting. Members of the Commission's staff have explained how the Code can be used when complaining directly to editors, and have given advice on how other points of view can be communicated.

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See Section D2, p. 139

14. The Commission has also undertaken more formal exercises to raise standards. Some of these have been reactive — on the back of complaints — and some proactive, such as the issuing of Guidance Notes.

#### Statements

15. On two occasions, the Commission has taken the opportunity of discrimination complaints to remind editors of the need for high standards in this area, and subsequent to each occasion reporting has improved markedly. While it could not censure the papers concerned because no breach of the Code had occurred, the Commission issued critical statements.
16. The first such occasion followed press coverage of the Euro 96 football tournament. The Commission received a record number of approaches — over 300 — from members of the public concerned about what they perceived to be stereotypical and aggressive coverage given to the German football team, which played England in the semi-finals. On this occasion, members of the Commission issued a statement placing on record their own concern about the lapses in editorial judgement which had occurred, and trusted that all editors would take into account the public reaction to the coverage of Euro 96 when covering future international sporting events. (See Appendix XXVIII).
17. The next test for editors came during the World Cup Finals in France in 1998. On the eve of the tournament Lord Wakeham, then Chairman of the PCC, issued a statement urging editors to ensure that their reporting and their comment does nothing to incite violence, disorder or other unlawful behaviour, or to foster any form of xenophobia that could contribute directly to such incitement (*PCC Annual Review 1998*, p.12).
18. Editors heeded this warning, and took account of the Commission's statement of two years earlier. Reporting of the tournament was notably more restrained and the Commission had no call to criticise editors again.

19. The Commission also had cause to issue a statement over articles in two different newspapers, by the same columnist, which criticised Malta in 1996. The articles were written in extreme terms and were hyperbolic to the point of absurdity but contained a large amount of material that many people found offensive. The complaints chiefly concerned matters of taste, but members of the Commission wanted to put on record their own abhorrence at the offensiveness of the language which, they believed, was a rare example of that worst type of journalism which all too easily can bring the whole of the press into disrepute <sup>10</sup>. This tactic worked and the Commission has not had to deal with any similar case since.

### Guidance Notes

20. The Commission, as a result of dialogue with the Mental Health Act Commission, issued guidance to editors in 1997 about the sort of language that is not acceptable when referring to sufferers from mental health problems. It said that epithets such as basket case and nutter should be avoided, and reminded editors that those detained under the Mental Health Act 1983 were not prisoners but patients, and consequently words such as cell, cage and jail were not appropriate to describe their accommodation.
21. The message of this Guidance Note was reinforced when the Commission upheld a complaint against a magazine which had said that there was a huge number of nutters on London buses and referred to a gibbering nutter <sup>11</sup>.
22. In 1999, a member of the Commission's staff monitored press coverage for a three month period to assess how newspapers were reporting mental health stories. No instances of a breach of either the guidelines or the more specific requirements contained in the Code were found.

### Conclusion

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<sup>10</sup> Report 36

<sup>11</sup> *Peck v Time Out*, Report 40

23. The Commission does not believe that its inability to adjudicate about general comment under the Code allows the press free rein to publish any inflammatory and discriminatory reference about various groups of people. The Code and the Commission are responsible for restraint in this area for several reasons. Firstly, any article that relies on an inaccuracy or distortion to make a point can be complained about under Clause 1 (Accuracy). Secondly, the Commission has helped to make editors aware of certain issues through the publication of Guidance Notes and statements, after which standards have noticeably risen. Thirdly the Commission has helped those representing minority groups to use the Code in their dealings with editors and has helped them to frame formal complaints when necessary.
23. However, the Commission also appreciates that there is a lot of work to be done in this area which is why it has undertaken the programme of initiatives outlined in Section D2.

**ANNEX (4) : Why a privacy law would be of no use to ordinary complainants**

1. Various sections of the PCC's submission set out the benefits of self-regulation and the work of the Commission for ordinary people — particularly in relation to privacy. These are that self-regulation is:
  - fast — sorting complaints out in weeks;
  - free — making a complaint costs nothing;
  - accessible — it is easy to make a complaint, and everything takes place on paper;
  - fair — both sides know the PCC will act impartially in dealing with a complaint and consistently in applying the Code. In addition the Commission has a huge amount of experience in dealing with matters of individual privacy.
2. A privacy law — and actions under it — exhibit none of these characteristics. This short note summarises why it would therefore be of little practical use to ordinary people.
3. Slow justice — no justice. Complaints to the PCC are dealt with quickly. Legal action takes a great deal of time — meaning that it is often years before an individual receives any form of redress. For instance, the story about Naomi Campbell attending Narcotics Anonymous was published in The Mirror on 1<sup>st</sup> February 2001. Final judgement in the matter was not handed down until 14<sup>th</sup> October 2002 — some twenty one months later.
4. The delay involved in legal actions is borne out by the Commission's own experience of complaints brought through lawyers. As set out in Section A5, while the average time to deal with all complaints was 32 working days in 2002, complaints made through lawyers took an average of 71 working days — 122% longer. Furthermore, it took an average of 84 working days for a complaint through a lawyer or other representative to be resolved — nearly half as long again as complaints

resolved directly with the complainant, without any difference to the success rate<sup>12</sup>.

5. Cost. Complaining to the Commission is free — which makes the PCC's service accessible to anyone. Actions under the Human Rights Act — as indeed would be the case under a privacy tort — would cost a great deal of money, with absolutely no prospect of an extension of legal aid. Estimates, for example, in the case of Naomi Campbell suggest that a prolonged action could cost upwards of £750,000<sup>13</sup>. This makes privacy actions in Court inaccessible to anyone other than the super-rich. However, as is established elsewhere in this submission, the overwhelming majority of individuals affected by media intrusion are ordinary people who could never afford such bills and would never risk the prospect of bankruptcy if they lost<sup>14</sup>.
6. It is sometimes suggested that an extension of so called no win, no fee actions in this area could assist individuals in utilising any law. To begin with, there would still be the prohibitive costs of insurance for those complaining. More importantly, most lawyers — certainly in the wake of the Ford, Campbell, Theakston and Flitcroft rulings — know that privacy cases are far from easy and NEVER clear-cut. While some lawyers might be prepared to take the gamble, it is unlikely that sufficient numbers would want to deal with the burden of complaints that the PCC receives every year.
7. Inaccessible to the most vulnerable. The PCC spends much time coaxing individuals who may be wary of complaining — often the most vulnerable — into doing so. We can do it on the basis that complaining is easy, that newspapers won't victimise those who complain, that the process is informal and does not involve any of the legal paraphernalia that many ordinary people find off-putting.
8. The opposite would be the case under any form of privacy law. Particularly vulnerable people would be afraid of the formality of the legal system. In addition, newspapers — as Naomi Campbell found out to her cost — tend to regard those who litigate against them as an

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<sup>12</sup> See Section A4, p. 37

<sup>13</sup> Guardian, 15<sup>th</sup> October 2002

<sup>14</sup> See Section C1, p. 83

enemy, and treat them accordingly in ongoing coverage (something which does not happen in the system of self-regulation).

9. Fairness and flexibility. The PCC knows a lot about privacy — and can tailor its dispute resolution service to the exact needs of an individual. Many people who complain to us simply want an apology — often privately — from the editor, and we set out to get for them what they want. This is particularly the case where individuals and organisations actually need to work together in the future: the complaints process — with its emphasis on amicable resolution — takes that into account. Indeed, some resolutions to disputes simply involve getting both sides talking.
10. The Courts, however, as Mr Justice Silber noted in his ruling in the Ford case <sup>15</sup>, are not well equipped to deal with matters of privacy, which are seldom clear cut and require a bank of experience. Nor is the legal process flexible: for those who wish a private resolution to a dispute — without involving any damages — a legal action is quite impractical. Indeed, legal actions simply serve to destroy relationships with newspapers or magazines — something those in the public eye, in particular, are often keen to avoid.
11. Parading your private life — to protect your privacy? One of the other benefits of the complaints system is that it is private and confidential. Newspapers do not reveal material made available to them as part of an investigation, either during it or after it; and individuals do not have to give evidence in public and subject themselves to cross examination<sup>16</sup>. Their privacy is protected throughout.
12. The same cannot be said of an action in Court. Newspapers will vigorously defend themselves in legal actions. The court system is adversarial, combative and public. Claimants can be subjected to substantial legal scrutiny across a range of intensely personal and private issues raised by their claims. Naomi Campbell, again, found that out to her cost, when she was questioned in detail about many very private matters — in the course of which she was exposed, as the

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<sup>15</sup> See Section C5, p.128

<sup>16</sup> This is one of the reasons why meetings are closed — see Section E6, p.199



Judge in the case recognised, as a liar, and for a short time even opened herself up to a potential charge of perjury.

13. Protecting ordinary people — or making them targets? One of the strengths of the PCC and self-regulation is that the Code actually inculcates among editors a respect for ordinary people — partly because they know that anyone can make a complaint, irrespective of their means or vulnerability. Editors seldom take a gamble on an ordinary person not complaining — and that is one of the reasons that standards have been raised over the years. It simply is not worth the risk.
14. However, under a privacy law inevitably without any legal aid, editors could rest assured that anybody other than the super-rich would be unlikely to take action against them. Editors might therefore be inclined — under such a system — not to take risks with celebrities but to intrude more into the lives of ordinary people. A privacy law could therefore make the situation worse for ordinary people — not better.
15. The situation in France underlines that point. There, many magazines have in the past actually used fines against them to boast about the amount of interesting material contained in them. Far from being a deterrent, fines become a marketing tool which increases circulation. How could anyone benefit from that?
16. Privacy laws impossible with the Internet. This short sections sets out why a privacy law would be of no use to ordinary people — who have, in any case, made no use whatever of the Human Rights Act. As a final note, it is worth pointing out that debates over whether or not a privacy law would be a beneficial thing are in any case largely irrelevant in the age of the Internet. It is axiomatic that the Internet cannot be regulated by law — and privacy controls would be just as useless in controlling it. A domestic privacy law would simply be a tool for the rich and famous to gag newspapers — while intrusive material about them could simply appear on the web in any case, as Chancellor Schroeder has found out to his cost.



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