IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

EXHIBIT SJM8 TO THE WITNESS STATEMENT

OF SIR JOHN MAJOR KG, CH, PC

THE GOVERNMENT'S RESPONSE TO
THE HOUSE OF COMMONS NATIONAL
HERITAGE SELECT COMMITTEE

PRIVACY AND MEDIA INTRUSION

Presented to Parliament by the
Secretary of State for National Heritage
by Command of Her Majesty, July 1995

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Contents

1 Introduction

1.1 This paper sets out the Government's response to the *Fourth Report of the National Heritage Select Committee,* on *Privacy and Media Intrusion* (HMSO Ref. 294-I), published on 24 March 1993. It includes an analysis of the responses to the consultation paper issued by the Lord Chancellor and the Secretary of State for Scotland in July 1993.

1.2 The Government welcomes the Committee's report. It is both a valuable commentary on the *Review of Press Self-Regulation* (Cm 2135), carried out by Sir David Calcutt QC and published on 14 January 1993, and a useful contribution in its own right to the continuing debate on press regulation and privacy. The report brings together a significant body of evidence of alleged abuses of press freedom. It exposes with clarity the fundamental dilemma facing a democracy which is determined to guarantee freedom of expression but which, at the same time, wishes to give suitable protection to other human rights of no less importance.

Background

1.3 The Committee's report is the latest in a long line of reports of inquiries undertaken since the Second World War which have investigated questions relating to press regulation and privacy. Three of these were Royal Commissions on the Press. The first, under the chairmanship of Sir William Ross, reported in 1949; the second, under Lord Shawcross, reported in 1962; and the third, under Lord McGregor of Durris (Chairman of the Press Complaints Commission from 1991–1994), reported in 1977. There was also an inquiry undertaken by the Departmental Committee on Privacy in 1972, under the chairmanship of the Rt Hon Kenneth Younger (as he then was). The most recent inquiries, before that by the National Heritage Select Committee, were those undertaken by the Committee on Privacy and Related Matters ('the Privacy Committee') (Cm 1102), under the chairmanship of Mr (now Sir) David Calcutt, which reported to the Home Secretary in 1990, and the *Review of Press Self-Regulation* by Sir David Calcutt himself, which was published by the Secretary of State for National Heritage on 14 January 1993, to which reference has already been made.

1.4 The Privacy Committee was established in response to widespread concern in the late 1980s among the public and in Parliament about press abuses, particularly those perpetrated by some tabloid newspapers. This concern had reached such a pitch that several Private Member's Bills, which would have given a statutory right to privacy or right of reply, were introduced in the 1987–88 and 1988–89 sessions. The Government was unwilling to support these Bills, both because of a long-standing reluctance to see statutory control of the press, and because of technical

flaws in the Bills themselves. At Report Stage of Mr Tony Worthington's Right of Reply Bill in April 1989, the Government announced the setting up of a committee to look at remedies for press abuses of privacy.

1.5 This committee, the Privacy Committee, reported in June 1990 with a series of important recommendations which have served to set the framework for the debate on press regulation and privacy ever since. It recommended that the Government should allow the press to prove that self-regulation, under a new Press Complaints Commission (PCC), could be effective. Further, it recommended that if, after a period, the industry had failed to set up the Commission, or if the Commission had failed, then newspaper regulation should be put on a statutory footing. The Committee also recommended the introduction of criminal offences to outlaw the most blatant forms of intrusion into privacy for publication purposes, together with further legal restrictions on press reporting.

1.6 In a statement made to the House of Commons at the time, the then Home Secretary (Mr David Waddington) accepted these recommendations on behalf of the Government and made clear that the Government expected the industry to set up the Commission, and that it would review its effectiveness after 18 months' operation to see whether newspaper regulation should be put on a statutory footing.

1.7 The newspaper industry duly instituted the Press Standards Board of Finance Limited (Pressbof), an industry body whose main functions would be to finance the proposed Press Complaints Commission and, through an Appointments Commission, appoint members to it. The PCC was duly set up on 1 January 1991, with a remit to adjudicate on complaints alleging breaches of a Code of Practice drawn up by a committee of editors convened by Pressbof. The Press Complaints Commission has been in operation ever since.

1.8 Once the 18-month probationary period for the Press Complaints Commission was over, the then Secretary of State for National Heritage (Mr David Mellor) asked Sir David Calcutt to undertake a review of press self-regulation with terms of reference to assess the effectiveness of non-statutory self-regulation by the press since the establishment of the PCC and to see whether the present arrangements for self-regulation should be modified or put on a statutory basis. Sir David was also asked to consider whether any further measures might be needed to deal with intrusions into personal privacy by the press, and to make recommendations.

1.9 Sir David's conclusion was that press self-regulation under the Press Complaints Commission had not been effective. He argued that the press would not be willing to make the changes needed, which he listed, to make the Commission the truly independent body it should be, commanding the confidence of the public as well as the press. He therefore recommended that the Government should introduce a statutory complaints tribunal on the model of the one described in the 1990 Report of the Privacy Committee. The tribunal would have wide-ranging powers, including the power to restrain publication of material obtained in breach of its code of practice and the ability to require the printing of apologies, corrections and replies, to award compensation, impose fines and award costs.

1.10 Sir David made five further recommendations bearing on intrusions into privacy by the press. One was that the criminal offences proposed by the Privacy Committee to deal with specific forms of physical intrusion should, with modifications, be enacted.

1.11 Sir David also recommended that the Government should give further consideration to the introduction of a civil remedy for infringement of privacy. Sir David's other recommendations were that the Government should consider the extent to which the Data Protection Act 1984 might contain provisions which are relevant for the purpose of misrepresentation or intrusion into personal privacy by the press, and should review the law relating to the interception of telecommunications with a view to identifying all significant gaps – relating to the protection of private telephone conversations – and to determining whether any further legislation was needed. He also recommended that the Government should give effect to the remainder of the reporting restrictions proposed by the Privacy Committee.

1.12 In a statement to the House of Commons on 14 January 1993, the then Secretary of State for National Heritage (Mr Peter Brooke) accepted all Sir David's recommendations for improved protection of privacy. However, he reserved the Government's position on his central recommendation for a statutory complaints tribunal. On the question of future press regulation, Mr Brooke made clear that the Government would announce its final views in the light of the press response to the criticisms of present self-regulation noted in Sir David Calcutt's review, the debate surrounding Mr Clive Soley's Freedom and Responsibility of the Press Bill, and the report of the National Heritage Select Committee.

1.13 The central recommendations contained in the National Heritage Select Committee's report were for a voluntary Press Commission and other self-regulatory improvements; a statutory ombudsman to act as a longstop in cases where complainants were dissatisfied with the way the Commission had dealt with their cases; and a Protection of Privacy Bill with criminal and civil elements.

1.14 This paper examines, first, whether statutory regulation of the press should be introduced, or, alternatively, that self-regulation of the press should continue (Chapter 2). It goes on to consider the arguments for and against using the criminal law to deal with intrusion (Chapter 3), and presents an analysis of responses to the consultation paper, issued by the Lord Chancellor and the Secretary of State for Scotland, on the scope for introducing new civil remedies against infringement of privacy (Chapter 4 and Annex B). Finally, in Chapter 5 the paper sets out the Government's detailed replies to the recommendations of the National Heritage Select Committee.

2 Regulation of the Press: Statutory or Voluntary?

The nature of the dilemma

2.1 The first chapter of the National Heritage Select Committee's report describes the dilemma for democratic societies of reconciling the often conflicting rights of freedom of expression and of privacy. It makes the important point that everyone should be entitled to a 'zone of privacy', but that its boundaries will depend on whether a person is in public life, or only temporarily in the public eye because of an ephemeral media interest. The report goes on to state the Committee's view that at present the necessary balance between the right of free speech and the right to privacy does not exist.

2.2 The right to receive and impart ideas and information – in other words, to freedom of expression – is one of the cornerstones of a democratic society. It is no accident that countries with poor human rights records tend also to have a state-controlled or at least subservient press. Freedom of expression is enshrined in Article 19 of the International Covenant of Civil and Political Rights and in Article 10 of the European Convention on Human Rights.

2.3 Article 10 of the European Convention explicitly states that the exercise of the right to freedom of expression carries with it duties and responsibilities, and the exercise of this right may be qualified in ways which are prescribed by law and necessary in a democratic society for, among other things, the protection of the rights of others. One such right, and one no less important, is the right to respect for private and family life, home and correspondence, as guaranteed by Article 8(1) of the Convention.

2.4 There are no laws in the United Kingdom which prescribe, regulate or restrict the contents of newspapers or the activities of journalists alone. Generally, United Kingdom law allows anyone to do anything which is not expressly or by necessary implication prohibited. Such prohibitions as now exist have been directed only at particular mischiefs, regardless of who committed them. The position of the press in the United Kingdom is thus in no way special: editors and journalists are subject to the general law in the same way as any private citizen. They face no special constraints, and, with a few minor exceptions, have no special privileges.

The Government's View

2.5 A free press is vital to a free country. Many would think the imposition of statutory controls on newspapers invidious because it might open the way for regulating content, thereby laying the Government open to charges of press censorship. Furthermore, the Government does not believe that it would be right in this field to delegate decisions about when a statutory remedy should be granted to

a regulator such as a tribunal. For both these reasons, 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. That conclusion applies equally to Sir David Calcutt's statutory complaints tribunal and to the National Heritage Select Committee's statutory Press Ombudsman proposal.

2.6 In reaching this conclusion, the Government has been mindful also of a variety of improvements in procedures and practices which the PCC has introduced over the past two years. The Government welcomes these changes. It has, however, sought to address whether the changes go far enough and, in particular, pay sufficient heed to the criticisms of the PCC expressed by Sir David Calcutt and the National Heritage Select Committee. These questions are considered in more detail below.

Self-regulatory improvements already made

2.7 In response to post-war reports on the press referred to in paragraph 1.3 above, the newspaper industry has generally argued strongly in favour of continued self-regulation. It has sought to improve existing systems of self-regulation, though not necessarily in the way or to the extent recommended in the reports, and not necessarily immediately. The industry has not fully implemented the recommendations of the Younger Committee or the third Royal Commission. Nor has it implemented all the recommendations of the Privacy Committee's report in 1990, Sir David Calcutt's 1992 review or the National Heritage Select Committee's 1993 report.

2.8 In a statement responding to Sir David's review and the National Heritage Select Committee's report, issued on 4 May 1993, Pressbof outlined a number of measures which were being or had been taken to strengthen self-regulation. These included:

- a majority of non-press members to be recruited to the Press Complaints Commission;
- additional independent members to be recruited to the Appointments Commission;
- the industry's Code of Practice to require ratification by the PCC; and
- changes to be made in the Code of Practice relating to 'bugging', long lens cameras, 'jigsaw' identification and the definition of public interest.

2.9 These changes, though welcomed by the Government at the time, fell far short of the recommendations of the National Heritage Select Committee and of Sir David Calcutt. The Government indicated that it would wish to keep a particularly close eye on how effectively and widely the new measures were implemented.

2.10 On 10 June 1993, the PCC announced the launch of a new helpline for members of the public concerned that the Code of Practice applied by the Commission was likely to be breached in a press investigation relating to them. On 15 July 1993, Pressbof announced changes to the Code, which had been ratified by the PCC on 30 June, covering long lens photography and 'jigsaw' identification in

cases involving sexual offences against children. The revised Code slightly redefines the public interest, defines private property and emphasises the responsibility of editors to cooperate as swiftly as possible in PCC enquiries, and to ensure that journalists do not breach the provisions on harassment. On 12 November 1993, the PCC announced that the newspaper industry was now committed to the progressive incorporation of the Code of Practice into the individual contracts of all journalists and editors. Future grave breaches of the Code would become a matter on which employers could consider disciplinary action, including dismissal.

2.11 On 20 January 1994, the PCC announced the appointment of one of its lay members, Professor Robert Pinker, as Privacy Commissioner, with special powers to investigate urgent complaints about privacy and bring them to the Commission for decision under the Code of Practice. This followed a number of calls by Government Ministers for the industry to establish a voluntary press ombudsman. According to the announcement, the Commissioner has the power to investigate *prima facie* gross or calculated breaches of the Code, even if the complaint had been made by a third party or there has been no complaint at all. Professor Pinker will, at the request of the Press Complaints Commission, begin enquiries immediately a complaint is made, or, in high profile cases, as soon as the story breaks if there is no complaint. He consults all the parties and prepares a draft adjudication with a recommendation for the full Commission, which will publish the adjudication as soon as it is determined. Professor Pinker may also recommend that the Press Complaints Commission asks publishers to take disciplinary measures against an editor, and the Commission will monitor what action has been taken.

2.12 On 1 January 1995, Lord Wakeham was appointed Chairman of the Press Complaints Commission. He stressed the importance of a Commission independent of the newspaper industry. He has also argued that his organisation must build up the confidence of the public and be rigorous and consistent in dealing with issues. The Government considers that the recent appointment of four distinguished independent members to the PCC, the increase of numbers on the Appointments Commission from three to five, and the fact that both bodies have lay majorities, are encouraging signs.

Desirable improvements to self-regulation

2.13 Following informal contacts between the Chairman of the PCC and the then Secretary of State for National Heritage (Mr Stephen Dorrell), Lord Wakeham wrote to Mr Dorrell on 19 June to record the improvements which the industry had accepted, or which he hoped to implement. Following her appointment as Secretary of State for National Heritage on 5 July 1995, Mrs Virginia Bottomley responded welcoming these changes, but encouraging the industry to make further improvements. The text of both letters is to be found at Annex A.

2.14 The main points in the exchange are as follows:

(i) Appointments

Lord Wakeham stressed the independence of the self-regulatory system. The Appointments Commission which appoints the members of the Press Complaints Commission now has a clear lay majority, the PCC itself has a strengthened lay majority, and all adjudications are made by the full commission. Lord Wakeham will shortly bring forward proposals for discussion on the Code Committee, possibly including the introduction of a lay element into the Code Committee.

Government response. The Government welcomes the increased lay element in, and hence independence of, the self-regulatory machinery, and would wish to see the introduction of a lay element into the Code Committee.

(ii) Press Hotline

Lord Wakeham has initiated a comprehensive internal review of the PCC's procedures for dealing with more difficult matters, and, once this is complete, proposes to publish the basis on which the Commission intends to deal with matters in future.

Government response. The Government would wish to see the introduction of a hotline, whereby, in appropriate cases, the PCC or Privacy Commissioner might warn editors, thought to be likely to publish a story or photographs which might have been obtained in breach of the Code, of the consequences of doing so.

(iii) Other improvements to procedures

Lord Wakeham is prepared, in appropriate cases, to consider accepting third-party complaints, and to initiate enquiries. He will bring forward proposals for discussion on the adoption of Citizen's Charter-style performance targets, and, as already stated, he intends to set up an internal review of procedures.

Government response. The Government welcomes the indication that third party complaints will, in appropriate cases, be accepted and investigated. It would also welcome the adoption of performance targets, and commends to the PCC other principles of the Citizen's Charter. It also recommends the publication of fuller summaries of adjudications, and greater use of oral hearings.

(iv) Code written into contracts

Lord Wakeham reports that the Code is being progressively incorporated into the contracts of editors and some journalists, with the result that they may be subject to disciplinary action if they have been found in breach of it.

Government response. The Government welcomes the increased authority of the Commission. It awaits further evidence of disciplinary sanctions, for example, whether they include dismissal.

(v) Compensation fund

Lord Wakeham has set in motion an internal review of procedures, but he does not discuss the possibility of a compensation fund.

Government response. The Government wishes to see compensation paid to those whose privacy has been unjustifiably infringed by the press, from a fund set up by the industry.

(vi) Contents of the Code of Practice

Lord Wakeham accepts that the Code needs to develop, particularly in relation to privacy, and will shortly bring forward proposals for discussion to introduce, at an earlier stage, the contribution of the public and the PCC to framing the Code, but he has not yet made any specific proposals for amendments to the Code.

Government response. The Government welcomes the improvements to the Code which the industry has already agreed. However, it believes that a number of specific improvements to the text are still necessary.

Need for further changes

2.15 In conclusion, the Government, while welcoming various self-regulatory changes which have been introduced by the industry, or which have been canvassed in Lord Wakeham's letter, looks to it to make further improvements to ensure that self-regulation can be made to work and to carry public confidence.

3 The Criminal Law and Intrusion

Introduction

3.1 The Privacy Committee took the view that its recommendations for improved self-regulation should be capable of dealing effectively with a great deal of intrusive behaviour by the media or its representatives. However it suggested in addition the introduction of criminal offences to prevent some specific forms of physical intrusion. The Committee identified these as physical entry into private property for the purpose of obtaining personal information for publication; the placing of bugging devices on private property for that purpose; and the photographing of individuals, or the recording of their voices, on private property for that purpose, in each case without consent.

3.2 Sir David Calcutt's *Review of Press Self-Regulation* recommended the creation of the same offences, with some minor amendments designed to catch some of the sorts of cases which had given rise to concern in the intervening period. He also suggested amendments to the defences to be available in justification of the intrusions. In its report, the National Heritage Select Committee recommended the introduction of a range of offences broadly similar to those proposed by Sir David Calcutt. It also proposed an additional offence of buying, selling or retaining any recording or material obtained through illegal means.

The Government's view

3.3 The Government has long recognised that there is, in principle, a case for the introduction of offences. It has therefore given the most searching and painstaking examination to how this could be done.

3.4 The Government has, however, so far been unable to construct legislation which, in practice, would be sufficiently workable to be responsibly brought to the statute book. It has no wish to introduce bad legislation. It therefore has no immediate plans to legislate in this area.

3.5 In coming to this conclusion, the decisive factor has been the difficulty in finding a way to define the precise scope of the offences, and the appropriate defences, in a way which:

- would be sufficiently clear to enable those concerned to know with a reasonable degree of certainty whether their proposed actions were likely to render them liable to prosecution;
- would not inhibit journalistic investigations genuinely in the public interest; but
- would actually catch those intrusions which constituted abuses; while

– minimising evidential difficulties to ensure consistent application of the law and to make it possible to meet the standard of proof necessary for a successful prosecution.

These problems have proved intractable. The analysis set out below illustrates why.

Sir David Calcutt's formulation

3.6 The operative clauses of the offences recommended by Sir David Calcutt would make criminal the following acts:

(i) entering or remaining on private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; or

(ii) with that intent, placing a surveillance device on private property without the consent of the lawful occupant, or using such a device (whether on private property or elsewhere) in relation to an individual who is on private property without the consent of the individual to such use; or

(iii) taking a photograph, or recording the voice, of an individual who is on private property, without his consent to the said taking or recording, with a view to its publication and with intent that the individual shall be identifiable.

3.7 It would be a defence to any of these acts to show that it had been done:

(i) for the purpose of preventing, detecting or exposing a crime, or other seriously anti-social conduct; or

(ii) for the purpose of preventing the public from being misled by some public statement or action of the individual concerned; or

(iii) for the purpose of informing the public about matters directly affecting the discharge of any public function of the individual concerned; or

(iv) for the protection of public health or safety; or

(v) under any lawful authority.

3.8 This formulation of the offences is analysed in detail below. The analysis illuminates the numerous difficulties and dilemmas which any Bill would have to resolve.

Offences

(i) Entering or remaining on private property...

3.9 Sir David Calcutt defined private property as any private residence, together with its curtilage (including garden and outbuildings), a hotel bedroom, any part of a hospital or nursing home where patients are treated or accommodated, and any school premises. But in practice, there is no clear public consensus as to where the line between public and private areas should be fixed. It is not clear, for instance, why a hospital reception desk is private while a hotel reception desk is not, or whether, say, a private room in a public restaurant should be regarded in law as a public or a private place.

...Without the consent of the lawful occupant...

3.10 This formulation would allow occupiers to connive in physical intrusion of others on their own property (for instance, of customers in a private gymnasium). However, it is clearly not practicable to outlaw all taking of photographs of people on private property (this would, for example, prevent newspapers publishing wedding photographs).

...With intent to obtain personal information with a view to its publication.

3.11 It could be said that someone who enters private property for a legitimate purpose but who then stumbles on personal information and decides to sell it to a newspaper is almost as reprehensible as someone who sets out in the first place to obtain information for publication. Such cases would, however, be very difficult to catch, particularly if the person concerned remained on the premises for a legitimate purpose. Equally, it can be argued that intrusions with intent to obtain information but without publication in view, should be caught in order, as the Committee puts it in paragraph 51, that the legislation should apply to all citizens, and not be directed solely at the press. On the other hand, this would mean catching intrusions for comparatively innocent purposes which should probably not incur the sanction of the criminal law.

3.12 Publication is also susceptible to different interpretations. Left at large, it might be held to cover the mere passing on of information from one individual to another, which could amount to no more than gossiping. There is no clear public consensus about where the distinction between this and the real mischief – widespread dissemination of information to the public at large – should be drawn in legislation.

(ii) Placing a surveillance device on private property without the consent of the lawful occupant with intent to obtain personal information with a view to its publication; or using such a device (whether on private property or elsewhere) in relation to an individual who is on private property without the consent of the individual to such use, with intent to obtain personal information with a view to its publication.

3.13 Surveillance device is not defined. This raises a difficult question: clearly the offence should catch devices which amplify or transmit sound or capture still or moving images surreptitiously, like bugs and long-range lenses. But it would be far from easy to achieve public consensus as to whether ordinary cameras, videos and sound recorders, which may enable intrusions without consent to happen, should also be covered.

(iii) Taking a photograph, or recording the voice, of an individual who is on private property without his consent to the said taking or recording, with a view to its publication and with intent that the individual should be identifiable.

3.14 As it stands, this provision would prevent a photographer from taking a photograph of Her Majesty The Queen on the balcony of Buckingham Palace, or opening a new ward in a hospital. That would clearly be indefensible.

3.15 The requirement that a person should be identifiable is an attempt to avoid penalising the photographer who takes a photograph of, say, a well-known celebrity

against a crowded background, without having to obtain the consent of all the members of the crowd. However, it cannot work. Everyone is identifiable to someone.

Defences

3.16 It is generally accepted that any new criminal offences relating to intrusion would need to be qualified by appropriate defences. However, any defences would need to be carefully constructed to ensure not only that those whose actions are considered to be justified do not find themselves liable to prosecution, but also that those whose actions should be penalised are not offered a loophole to exploit. The Government is not yet satisfied that this can, in practice, be achieved.

(i) Preventing, detecting or exposing a crime, or other seriously anti-social conduct.

3.17 Most people would agree that the exposure or prevention of crime justifies some intrusion into privacy. Some, however, would certainly question whether the exposure of any crime, no matter how trivial, justified intrusion into private property.

3.18 It is, however, clearly extremely difficult to define 'seriously anti-social conduct'. Courts and juries will have differing views of what constitutes such behaviour. The law would therefore have different effects in different courts. This would be unavoidable, but unjust.

(ii) Preventing the public from being misled by some public statement or action of the individual concerned.

3.19 This defence is sensible in principle, but very difficult to define in practice without offering a defence which is so wide as to be self-defeating. The Committee recommends that the test should be 'harmfully' misleading statements, but this introduces further imprecision, and scope for different courts to interpret the law differently.

(iii) Informing the public about matters directly affecting the discharge of any public function of the individual concerned.

3.20 Here, the argument would often turn on what matters 'directly' affect the discharge of any public function. The most obvious grey area would be cases where what was revealed was, for example, some aspect of a person's life which did not directly relate to his or her public duties but which might be said to reflect in a general way upon the manner in which the person concerned performed his or her duties. It is clear that there is no public consensus about where these boundaries should be drawn. Even if there were, it is not clear that they could be satisfactorily defined in legislation.

Further points

3.21 One particular difficulty arises through the possibility that an editor or journalist might make defamatory statements under cover of absolute privilege. This

danger arises in the following way. Unscrupulous editors or journalists might be tempted to create circumstances in which a charge under the intrusion offences was brought against them. This would enable them to seek to defend their action by making statements which, though purporting to give support to a public interest defence, were in fact defamatory. This would be a clear abuse of the judicial system and would bring the law into disrepute.

3.22 A further difficulty arises with the formulation of defences. It would be necessary to decide whether they should be based upon a subjective or objective assessment of the facts. The choice is between an objective assessment of whether or not the defendant had reasonable grounds for his belief, and reliance upon the defendant's own honest belief (no matter how misconceived).

3.23 The subjective approach might have the effect of excusing a whole range of behaviour in the case of inexperienced or, indeed, lazy journalists who genuinely, but mistakenly, believed that intrusive conduct was the only way to obtain certain material which would reveal, for example, evidence of involvement in crime. The objective approach, on the other hand, would act as a disincentive to journalists, uncertain what view a court might take, with potentially legitimate grounds for intrusion.

3.24 Sir David's proposals would not deal with cases involving intrusion which took place abroad when the publication occurred in this country, or alternatively, cases where the intrusion took place here but the intention was to publish the information in another country. This would create obvious, but probably inevitable, anomalies.

3.25 It should be added that Sir David's formulation is concerned solely with the intrusion for purposes of publication, whereas the Committee would also penalise those who make use of information so obtained. While the Committee's approach is more equitable, it introduces further evidential difficulties, such as whether the editor publishing a photograph would be culpable only if he knew it had been obtained through an illegal intrusion, or whether he would be absolutely liable.

Conclusion

3.26 The Government remains sympathetic to the view that certain kinds of intrusion for the purpose of collecting personal information can only be justified in the most exceptional circumstances. However, any legislation would have to establish a balance between the requirement to defend the practice of responsible investigative journalism and the right of the individual to personal privacy. The Government is not convinced that any of the formulations so far proposed would deliver that balance. They would either prevent responsible journalism or – in anxiety to protect the interests of the responsible journalist – create defences that were so wide as to render the offences meaningless.

4 The Civil Law and Infringement of Privacy

Background

4.1 In 1990 the Privacy Committee recommended against a tort of infringement of privacy on the grounds that it would not be necessary unless or until the measures for improved self-regulation, which it had recommended, were shown to have failed. But Sir David Calcutt, in his *Review of Press Self-Regulation*, having concluded that self-regulation under the Press Complaints Commission had not been effective, recommended *inter alia* that the Government should give consideration to the introduction of a new tort of infringement of privacy. The Government accepted this recommendation. The National Heritage Select Committee, in its report on *Privacy and Media Intrusion* in March 1993, also recommended that there be a Protection of Privacy Bill, which would give a civil remedy for infringements of privacy.

The consultation paper

4.2 On 30 July 1993 the Lord Chancellor and the Secretary of State for Scotland issued a consultation paper on the feasibility of a new tort – in Scotland, delict – of infringement of privacy. This would provide a civil remedy to anybody who had suffered substantial distress from an infringement of his or her privacy.

Response to consultation

4.3 One hundred and twenty four responses were received by 25 November 1993, of which 92 were substantive. They can be classified as follows:

judiciary, lawyers and legal bodies and academics	50 (40.3%)
individuals (including Privacy Committee members and sponsors of previous Bills)	30 (24.2%)
media	21 (16.9%)
government departments and agencies	9 (7.3%)
other bodies	14 (11.3%)

The Government is grateful to all those who responded. A list of respondents is annexed at C.

4.4 Of the 124 respondents, 59 supported a civil remedy, 32 opposed it and 33 offered no clear view (usually because they were concerned only with a specific aspect of the paper).

4.5 Those who advocated a new civil remedy were concerned primarily with the principle. For them, privacy was seen as an important value which should be protected by law, as a right in itself and not merely incidentally to the protection of other rights. The number of infringements which take place was therefore irrelevant. Legal rights to privacy are recognised in different ways in many European and

common law countries. They argued that both on grounds of principle and because of international commitments, in particular the European Convention on Human Rights, this development was required.

4.6 A minority of respondents argued that the present law could be developed by the courts to cover the policy objectives set out above. Some argued that development of the law of breach of confidence was the best method of giving further protection to privacy. It was possible that law would develop so as to make the confidential nature of the information, rather than the confidential nature of the relationship, the critical requirement.

4.7 However, the majority of respondents considered that infringement of privacy is not covered by existing laws. In their view, existing laws do provide some protection, but they are conceptually different from privacy. The overwhelming majority of those in favour of a new tort and delict (including, it should be noted, the judges) agreed that, if it were introduced, it should be introduced by statute. That is also the Government's view.

4.8 Some respondents put forward several arguments against a new civil remedy. It was argued that there is insufficient evidence of a major problem with intrusions into people's privacy, that the small number of infringements does not justify legislation, and that substantial primary legislation would be an inappropriate and excessive response to what were only occasional (and, indeed, sometimes justifiable) infringements of privacy. The publicity surrounding such infringements should not mislead people into thinking that there was a serious and widespread problem which required the creation of a new civil remedy to resolve it.

4.9 Several respondents feared that a new civil remedy could be used to stifle freedom of expression and/or information, and therefore argued that it only should be recognised – if at all – if the right to freedom of information was also recognised. In particular there was concern that the availability of injunctive relief and interdict, which might be sought in particular by unscrupulous people, would undermine legitimate investigative journalism. At an early stage in an investigation a journalist might not have uncovered sufficient evidence to persuade a court that publication should not be prevented; the balance would always favour complainants. Examples were given of so-called gagging writs for defamation which had been threatened or issued and it was said that the same would happen if there were to be an enforceable right to privacy. Several people argued that the right to freedom of expression outweighed the right to privacy, and that there were already unacceptable limitations on free speech in legislation.

4.10 Clearly a balance would have to be struck, in framing any legislation, between the right to privacy and the right to freedom of expression. Under the European Convention on Human Rights each is subject to the other; neither has been held to be paramount. There would have to be an adequate public interest defence in any new civil remedy.

4.11 Some respondents argued that a tort or delict would be a remedy for the rich and famous, inaccessible to ordinary people. This would be diminished if legal aid were to be made available, which the Government would be prepared to consider.

However, this expenditure would have to be offset by savings elsewhere in the legal aid budget, or in public expenditure at large.

4.12 Finally, although the majority of respondents took the view that any difficulties of definition were not insurmountable, some argued that that the right to privacy was too difficult to define. Any new law would be so uncertain as to be of little value. In particular, it was said that 'privacy' and 'personal information' could not be defined satisfactorily.

Conclusion

4.13 In considering the results of the consultation the Government draws two conclusions. First, it does not believe there is sufficient public consensus on which to base statutory intervention in this area. It would be a significant development of the law and the Government is not at present convinced that the case has been made for it. Secondly, it strongly prefers the principle of self-regulation. The shortcomings of self-regulation have been evident, but the Government accepts that there is a serious desire on the part of the press to make improvements. The Government wishes to encourage this. It therefore has no present intention to legislate a new civil remedy.

4.14 The industry has indicated that it wishes to adopt a tighter form of words on privacy in its Code. The Government welcomes this. It believes that it may be helpful for the industry, in refining its Code, to see what a hypothetical civil remedy might look like. Annex B accordingly sets out how legislation might have been framed, together with an accompanying commentary which incorporates the relevant points arising from the consultation by the Lord Chancellor and the Secretary of State for Scotland.

5 National Heritage Select Committee Recommendations

Recommendations for press

5.1 A number of the recommendations (nos. xiv–xxxiii) are directed not to the Government but to the newspaper industry and the PCC. As indicated in paragraph 2.15, the Government, while it welcomes the changes in the structure and operation of press self-regulation, introduced or promised by Pressbof and the PCC, does not consider that they go far enough. It therefore looks to the industry to give further consideration to the Government's recommendations for improved self-regulation.

5.2 The Government hopes that, in addition, the industry, through its proprietors, editors and journalists, as well as through Pressbof, the Appointments Commission, the PCC and the Code Committee, will take all necessary steps to see that any outstanding recommendations which have been accepted by the industry are fully implemented at the earliest opportunity. The Government, and no doubt Parliament, will be keeping a close watch on the steps which the industry takes to make further improvements to self-regulation.

Recommendations for Government

5.3 The following paragraphs set out the Government's response, one by one, to those recommendations of the National Heritage Select Committee directed at Government.

Recommendation (i)

The steps taken by the army and police when a serviceman is killed or wounded on duty to give support and guidance to the relatives are very useful initiatives and should serve as an example to be followed as widely as possible (paragraph 32).

Response

The Government agrees with the National Heritage Select Committee that the steps taken by the army and the police to give support and guidance to relatives of service personnel killed or injured on duty, including guidance on the handling of press enquiries, are examples of good practice in this area.

The Government considers that this guidance might be of value to relatives of those killed or injured in any circumstances. The recommendation has been drawn to the attention of the Civil Emergencies Adviser who will consider how best to disseminate the guidance. The Government understands that the national charity Victim Support is also aware of this issue.

Recommendation (ii)

A statutory press complaints tribunal should not be established (paragraph 39)..

Response

The Government agrees with this recommendation for the reasons set out in paragraphs 2.1 to 2.6 above.

Recommendation (iii)

Effective action to extend the public's right of access to information should be taken as quickly as possible and certainly no later than the implementation of the Committee's other recommendations (paragraph 46).

Response

A *White Paper on Open Government* (Cm 2290), published on 15 July 1993, proposed a number of measures for increasing openness in public affairs. They included a new Code of Practice on Access to Government Information which came into force from 4 April 1994; a new Code of Practice on Openness in the NHS which came into force from 1 June 1995; a new statutory right of access to health and safety information; a new statutory right of access, by the individuals concerned, to personal records held by the Government and by other public sector authorities; and proposals, now in force, for facilitating the release of historic records into the public domain. In framing these proposals, the Government gave careful regard to factors such as those mentioned by the Committee; namely, the importance of protecting national security, defence, law enforcement, commercial confidentiality and personal privacy.

The Government agrees with the Committee that the provision of more information to the media (and others) would be beneficial to society. It notes the significant and continuing increase in the amount of information available about a wide range of Government functions. It can, however, only share the Committee's doubts that this will of itself bring an end to 'triviality and malice' in certain sections of the media.

The Government will be pursuing the proposals in the *White Paper on Open Government* and considering further the issues in this paper. However, it sees no need for links between the timing of these developments.

Recommendation (iv)

A Protection of Privacy Bill, which will provide protection for all citizens and whose provisions similarly will apply to all citizens, should now be introduced (paragraph 47).

Response

The National Heritage Select Committee's proposed Protection of Privacy Bill contains both civil remedies and criminal offences. The Government's conclusions on these matters are set out in Chapters 3 and 4 of this paper.

Recommendation (v)

It will be a defence to any of the civil offences in the Protection of Privacy Bill that the act had been done in the public interest (paragraph 48).

Response

The Government's conclusions on civil remedies are set out in Chapter 4 of this paper.

Recommendation (vi)

Further consideration now be given to the introduction of legislation on breach of confidence as a valuable part of the Committee's proposed Protection of Privacy Bill (paragraph 50).

Response

The consultation paper issued by the Lord Chancellor and the Secretary for Scotland in July 1993 discussed the applicability of the law of breach of confidence in relation to privacy, and concluded that this does not have the potential to offer the fullest desired protection to privacy. The Lord Chancellor is nonetheless separately reconsidering the Law Commission's recommendations concerning the introduction of legislation on breach of confidence.

Recommendation (vii)

The Government examine section 7 of the 1875 Conspiracy and Protection of Property Act with a view to incorporating into the Protection of Privacy Bill comparable provisions as they relate to besetting and harassment in the context of unreasonable invasion of privacy and changing its terms to reflect altered circumstances since that date. These changes possibly could include the need to curtail sexual harassment, noise pollution etc. The penalty should also be appropriately updated (paragraph 54).

Response

In England and Wales, section 5 of the Public Order Act 1986 already makes it an offence in certain circumstances for a person to use threatening, abusive or insulting words or behaviour within the hearing or sight of a person who is thereby likely to be caused harassment, alarm or distress. Additionally, section 154 of the 1994 Criminal Justice and Public Order Act amends Part I of the 1986 Public Order Act by inserting a new section 4A, which makes it an offence to use threatening or abusive behaviour with intent to cause harassment, alarm or distress. In Scotland, such activities are likely to be caught by the common law offence of breach of the peace. The consultation paper on infringement of privacy treated freedom from harassment and molestation as part of privacy.

In response to the consultation paper, there was general agreement on omitting a specific reference to harassment by noise in the definition of any new civil remedy – although some instances of harassment by noise could be covered by it. The Government is aware of the concern expressed over noise pollution, particularly that which is malevolently generated at neighbourhood level. It believes that the issue of whether the existing law controlling certain types of noise should be strengthened is

one which should be considered separately from questions of privacy. On 27 March 1995, it issued a consultation paper on the effectiveness of neighbourhood noise control, asking for responses by 30 June.

Recommendation (viii)

It will be a defence to any of the criminal offences in the Protection of Privacy Bill that the act had been done in the public interest (paragraph 55).

Response

The Government's conclusions on criminal offences are set out in Chapter 3 of this paper.

Recommendation (ix)

A Protection of Privacy Bill, taking account where necessary of the essential differences in approach between the criminal and civil jurisdiction in Scotland and England and Wales, should apply to Scotland as well as to England and Wales (paragraph 56).

Response

The Government accepts that, taking account of the essential differences between the criminal and civil law in Scotland, any new criminal (or indeed civil) provisions for the protection of privacy should apply to Scotland as they apply to England and Wales. However, it has no proposals to introduce such provisions.

Recommendation (x)

The Government should draw up a definition to cover the most potentially intrusive surveillance devices and should give urgent consideration to the desirability of either licensing or registering such devices (paragraph 57).

Recommendation (xi)

Certain surveillance devices which are available for sale in the UK as "for law enforcement" are banned from sale to the general public in the USA. Comparable restrictions should apply in this country (paragraph 57).

Response

The Government is not persuaded that action directed at surveillance devices themselves would be appropriate. It is more important to approach the issue from the perspective of unacceptable uses. The improved self-regulation which the press has already undertaken – and further steps which are proposed or are in prospect – should discourage many of the objectionable uses of these technologies.

Recommendation (xii)

Legal aid be extended to cover proceedings taken under the Protection of Privacy Bill (paragraph 58).

Response

The Government has decided for the present not to introduce a new civil remedy (see Chapter 4).

Recommendation (xiii)

Legal aid be extended to cases of defamation (paragraph 58).

Response

Defamation actions have never been included in the legal aid scheme. Given the constraints of necessarily limited resources, the Government does not consider that it would be appropriate to extend the scheme in this way. Moreover, the difficulty in appraising the strength of these cases under the merits test usually applied to legal aid applications would reduce the test's effectiveness in filtering out the undeserving cases, and in safeguarding public funds. The European Commission of Human Rights has recently reaffirmed its finding that the United Kingdom is not in breach of the European Convention on Human Rights by not extending legal aid to defamation cases.

Remaining recommendations for Government

(xxxiv) A statutory Press Ombudsman should be appointed (paragraph 97).

(xxxv) The Press Ombudsman be appointed by the Lord Chancellor in consultation with the Lord Advocate (paragraph 98).

(xxxvi) A suitable early investigation by the Press Ombudsman would be an examination of what responsibilities a proprietor has in relation to the newspapers over which he has control (paragraph 100).

(xxxvii) The Press Commission should make it its practice, when informing the parties to a complaint of its decision, also to inform them of their right to appeal to the Ombudsman if they are not satisfied with an adjudication or a recommendation about compensation or the level of a fine (paragraph 101).

(xxxviii) The Press Ombudsmen be given statutory powers to supervise the wording, position and format of corrections, apologies and retractions (paragraph 102).

(xxxix) The Press Ombudsmen should have statutory authority to publish with an adjudication whenever he thinks it appropriate, the names of those responsible for a serious breach of the Code (paragraph 103).

(xl) The Press Ombudsman be given statutory authority to order the payment of compensation (paragraph 104).

(xli) The Press Ombudsman be given statutory authority to impose a fine (paragraph 105).

(xlii) The Press Ombudsman should be required to make an Annual Report to Parliament which, like the Committee for the Parliamentary Commissioner for Administration and his reports, this Committee intends formally to consider. The Committee recommends consequentially an amendment be made to its terms of reference to include a provision similar

to that for the Select Committee on the Parliamentary Commissioner for Administration (paragraph 107).

(xliii) Where a newspaper refuses to pay a fine or compensation which has been ordered by the Ombudsman, the Ombudsman should be able to seek a Court order requiring it to be paid. Similarly, where a newspaper dissents from the Ombudsman's decision, it should be entitled to ask the Court to discharge the order (paragraph 108).

Response

The Government does not consider that it would be appropriate to appoint a statutory Press Ombudsman at this stage, for the reasons set out in paragraphs 2.1 to 2.5 above. The Government, while giving a qualified welcome to the appointment of a Privacy Commissioner (announced on 20 January 1994), asks the industry to assess his effectiveness after an initial period in office, and to take the further self-regulatory steps recommended in paragraph 2.14 and Annex A.

6 Conclusion

6.1 This paper, as well as offering a detailed response to the National Heritage Select Committee's recommendations, sets out the Government's final view on Sir David Calcutt's central recommendation for introduction of a statutory tribunal to deal with complaints against the press. The Government does not consider that a persuasive case has been made out for statutory regulation of the press, and accordingly it does not propose to introduce a statutory press tribunal. Furthermore, the Government believes that the Committee's recommendation for a statutory Press Ombudsman as a long-stop for people dissatisfied with the way in which the self-regulatory body had dealt with their complaint is open to the same objections as a statutory tribunal. The Government does not therefore intend to proceed with this proposal either.

6.2 Chapter 3 of the Response discusses the question of using the criminal law to prevent certain specific practices. The Government has no objection of principle to using the criminal law in this way, but has not been able to construct legislation which is, in the Government's view, workable in practice. Accordingly it has no immediate plan to legislate in this area.

6.3 For the reasons discussed in Chapter 4, the Government has no present plans to introduce a statutory right to privacy.

6.4 So far as present self-regulation under the PCC is concerned, the paper sets out the Government's attitude to the reforms which have been introduced or announced by Pressbof and the Commission. The Government believes that, while the reforms are most welcome in themselves, they do not go far enough, and the newspaper industry should consider the further improvements set out in Chapter 2 and Annex A. The industry should also, in particular, consider incorporation of elements of the right of privacy described in Annex B. The Government firmly believes that the future of press regulation hangs on the industry's acceptance of the need for further action along these lines. Only if it is prepared to take such action will it satisfy the demands of Parliament and the public for a more effective system of independent regulation of the press offering real prevention, or redress for those harmed by unwarranted actions by the press.

Annex A

PRESS COMPLAINTS COMMISSION

From the Chairman

The Rt Hon Stephen Dorrell MP
Secretary of State
Department of National Heritage
2-4 Cockspur Street
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19 June 1995

Dear Stephen

Earlier this year I promised to write to you with my reflections after six months as Chairman of the Press Complaints Commission, on the performance of press self regulation.

There are, of course, a number of separate issues to deal with - but there seem to me, at root, to be two of overriding importance at this stage: our independence from the press, and our credibility with the public.

But before going into those in detail I want to make two general observations from my first six months in office.

First, I have been immensely impressed - and if truth be told, pleasantly surprised - by the absolute commitment of every level of the newspaper and magazine industry to ensuring the effectiveness of the PCC. I have spent a considerable amount of time travelling around the country talking both to newspaper publishers and to editors about the Commission - and I have no doubt that their commitment is as genuine as it is vigorous. There are many tangible signs of this support - most particularly the industry's record in financing the PCC at no cost to the taxpayer, and maintaining that support through a period of extraordinary scrutiny of self regulation and occasional controversy about the durability of the PCC. Given its voluntary nature, all this is a vital prerequisite for the long-term success of the system.

Secondly, I have been equally impressed by the high quality of the work produced by the staff of the PCC. They are a committed and energetic team; I am delighted - if not, therefore, surprised - that the official I invited you to send from your Department to our office was pleased with what he found.

Having made these important points, let me turn immediately to the issue of our independence from the industry which finances us - because the PCC can only work over the long term if it is genuinely independent of the press. In essence, the PCC is the external check on the operation of the press' own voluntary system of regulation - and for it to command any confidence with the public it must be truly independent. We are a watchdog with sharp enough teeth to bite the hand that feeds us, or we are nothing.

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When I was appointed I was given a clear and unequivocal undertaking that I would be free to operate with complete independence. Indeed, it was never suggested to me that the appointment would be made on any other basis. I have therefore conducted the affairs of the Commission accordingly and without interference.

I have no doubt that, in its early years, the individual members of the Commission did operate with complete independence. However, few outside of the press seem to have been persuaded that the PCC during that period was, *as an institution,* conducting itself thus. Perceptions, as we know, can be as legitimate - and as deadly - as facts. My first essential task was, therefore, to ensure both the reality and the perception of the Commission's independence.

To begin with I had to deal with the system by which the members of the Press Complaints Commission are appointed. If this is not open and independent, doubt will naturally be cast on the integrity of the appointments. I was therefore deeply dismayed to discover that the PCC's appointments system was operating in breach of its own Articles of Association, and had been from the time they were changed in early 1993 to reflect the concerns of Sir David Calcutt's second review of press self regulation.

I have now dealt with this breach. As a result, we have a genuinely independent appointments body, which I chair, comprising four other people - only one of whom is from the industry. The other three independent members are: Sir Denys Henderson (former Chairman, ICI plc), Sir Geoffrey Holland (Vice Chancellor, Exeter University) and Lord Irvine of Lairg QC (Shadow Lord Chancellor). The one press member is Harry Roche, the Chairman of the Guardian Media Group Plc and of the Press Standards Board of Finance (Pressbof). As well as representing the voice of the industry in this forum, Mr Roche is also the conduit for bringing forward suggestions for possible press members of the PCC. As a result of these changes, I am now completely satisfied that the independence of the appointments process from the press can be guaranteed - and be seen to be.

I am very pleased that the new appointments body moved quickly once reconstituted to ratify those previous appointments to the Commission which I believe had been made in breach of its own constitution, and supported my nomination of four new lay members of great distinction. They are: Sir Brian Cubbon (former Permanent Secretary at the Home Office and the Northern Ireland Office), Lady Browne-Wilkinson (a senior partner at Charles Russell solicitors), Lord Tordoff (Principal Deputy Chairman of Committees, House of Lords) and Baroness Smith of Gilmorehill. The PCC now has a strengthened and absolute lay majority and all adjudications are made on such a basis.

I do, of course, greatly value the contribution made to the Commission's work by its industry members as it is vital for the Commission to be able to draw on the experience of senior and respected editors. I hope that their continued participation in our work will be encouraged

and I am again pleased that the new appointments body is renewing the editorial membership. It is a burden for any working editor to serve on the PCC and the distinction of the industry members of the Commission is another manifestation of the industry's commitment to the voluntary system.

As important as our independence is our popular credibility. No system of regulation can, after all, work unless it commands - and deserves - the respect and trust of the public. That it can only achieve if it retains intact a reservoir of strong, moral authority.

It seems to me that the manner in which the Commission dealt early in its life with several issues arousing great controversy came very close to undermining fatally that reservoir of authority - and in turn the standing of self regulation.

I have put an end to that, and sought to win back public faith in the principles and performance of the system. I have been rigorous in ensuring that every issue - from a complaint about the smallest local newspaper to a complaint about the invasion of privacy by a national tabloid of a member of the country's great institutions - is dealt with calmly and consistently within the Code of Practice. The Commission has therefore refused to give instant reactions in the heat of any moment.

I believe the manner in which the Commission has built authority during these early months through a considered and judicial approach to difficult issues has been successful. As a result, breaches of the Code which have required condemnation by, and firm action from, the Commission have been swiftly and effectively dealt with in the absence of injudicious previous comment. I intend to maintain this calm and consistent approach.

As a result, the Commission has escaped from the cycle of occasional crises which at times served to undermine its authority. Combined with a fresh and more independent membership, the standing of the PCC has been greatly enhanced, allowing us to build a more positive profile among the public. Alongside the ongoing publicity initiatives we have designed to raise the public's awareness of the organisation, this has led to a dramatic increase in the number of complaints made to the Commission. During the first five months of this year, the volume of complaints as compared to the first five months of last year has increased by over 40% and in comparison with the first five months of 1993 by nearly 60%. Of course, I recognise that the conclusions which can be drawn from such statistics are rarely clear-cut. Nevertheless, the number of complaints to the PCC is in part a product both of the public's awareness of the complaints procedure and the general perception of the organisation's competence and authority. Against that background, I feel able to conclude that such a substantial increase in the number of complaints over this short period is another demonstration that we are moving in the right direction.

The bed-rock of the Commission's work is the industry's Code of Practice - the set of rules framed in the first instance by editors themselves, by which the Commission uniformly judges complaints and to which the entire industry subscribes. It must consistently be emphasised that the development of a national Code of Practice for the press is one of the

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many considerable achievements of the self regulatory system over the last five years. It is the industry's commitment to the Code that enhances the strength of the PCC's bite in its adjudications on complaints. Furthermore, the incorporation of the Code in editors' and journalists' contracts of employment gives the PCC a powerful sanction, which I will deal with in more detail later.

I have been impressed by the general operation of the Code and by the manner in which it is applied by the Commission and the industry. Nevertheless, greater consistency is needed - particularly in terms of the Commission's interpretation of the Code - and this is one of the reasons I am so pleased we have been able to attract a distinguished lawyer to the Commission's membership. Furthermore, the Code needs to continue to develop in some areas, particularly in relation to privacy, and the Commission must be more active in drawing principles out of its adjudications and disseminating these, either as additions to the Code or as guidance to the press on particular issues.

I regard as crucial the status of the Code as a set of professional standards supported by editors and publishers on behalf of the entire press. However, it is arguable that the Committee responsible for the initial framing of the Code should not be composed only of editors and convened solely under the aegis of Pressbof. Of course, there is a procedure for resolving disagreements between the PCC and the Code Committee regarding the Code but this has not so far been brought into operation; the Commission must also ratify the Code. However, there is concern about the balance of the Code Committee and the method by which it is administered. In my view these issues are vital for the confidence with which both the public and the Commission can view press self regulation.

I will shortly be bringing forward proposals for discussion to introduce at an earlier stage the contribution of the public and the Commission to the framing of the Code, perhaps by introducing a lay element into the Code Committee, and to enhance accordingly the standing of the Code Committee as a central part of the self regulatory system. The proposals will, properly, seek positively to maintain the crucial role of the press in drafting and endorsing what is after all a set of professional standards, incorporated into the contracts of employment of an increasing number of editors and journalists.

I intend that comments and criticisms of the present Code should be considered as soon as possible in the future under a procedure built on the principles outlined above.

Having dealt with independence and authority, I want now to turn to the <u>performance and procedures of the Commission</u>.

The prime reason for the Commission's existence is, of course, to deal with complaints about the press and I have been impressed by our success in dealing with the increasing number of complaints that are being brought to our attention. The vast majority of the substantive

complaints made to the PCC concern inaccuracies in newspaper and magazine articles and I am pleased that nearly nine out of ten of these are resolved quickly to the satisfaction of those complaining. This is a considerable triumph of which we are rightly proud.

I intend to look shortly at the introduction of Citizen's Charter-style performance targets by which members of the public will be able to judge the efficacy of our operation. Again, I will bring forward proposals for discussion.

I recognise that there are a number of outstanding matters concerning the Commission's procedures arising from Sir David Calcutt's review of press self regulation and the National Heritage Select Committee report on privacy and media intrusion. While some of their concerns may have been overtaken by subsequent developments and improvements to the PCC I have nevertheless initiated a comprehensive internal review of the manner in which the Commission deals with some of the more difficult matters it has to consider. The Commission's procedures have not been reviewed in this way since 1991 and I have no doubt that improvements can be made. There has been substantial progress made in reducing the amount of time taken to deal with complaints but it may be more that more can be done in this area. Once our review of procedures is complete I propose that the Commission should set out in clear and unequivocal terms for both the public and the press the basis on which it intends to deal with matters in future. This greater degree of accountability will I am certain be welcomed by all concerned.

One issue relating to our procedures which I would like to mention at this stage is the question of third party complaints. In my view, the unchecked acceptance of third party complaints would be as disastrous for the PCC as it was for the old Press Council. However, I remain prepared to consider accepting such complaints in particular circumstances - for instance, where the responsibility of the press to provide accurate information to its readers is relevant. I will also ensure that the power I have to initiate a PCC inquiry will be used where I see a duty for the Commission to adjudicate in the public interest. For example, the question of the identification by the press of national lottery winners wishing to remain anonymous required a response from the PCC. I was pleased to receive a third party complaint about this matter which formed the basis of an important PCC inquiry - but if there had been no complaint I would have initiated our own investigation. The guidance issued to the press as a result of this process demonstrates the importance of the PCC resolutely facing up to these issues.

The final area I would like to mention concerns the sanctions which the Commission can apply to publications found to breach the Code and the remedies it can deliver to complainants. In the first instance, it is important to understand the sanctions to which the press have already agreed and which act to reinforce the authority of the PCC. As you know, the industry accepts that the Commission's decisions on matters relating to the Code are final and publications print any critical adjudication from the PCC in full and with due prominence. Similarly editors accept the Commission's advice on the prominence and

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content of corrections and apologies where they are part of an agreed resolution to a complaint. I am sure that in the future the PCC may wish to give firmer advice on the prominence with which critical adjudications are published and this is a matter I will seek to take forward.

The most important development in this area, which I have actively encouraged, has been the progressive incorporation of the Code of Practice in the contracts of employment of editors and senior journalists and within freelance agreements. This means that in the case of a severe or calculated breach of the Code, for example, the Commission can expect publishers to take appropriate disciplinary action. The recent case in which the Chairman of News International, Mr Rupert Murdoch, issued a public reprimand to the editor of the News of the World in support of a PCC ruling shows the power of this process to punish recalcitrant editors. This was the first time the PCC had directly and in public enjoined a publisher in this way and the prompt and positive response from the man perceived by many to be the country's most powerful newspaper publisher was a manifest demonstration of the industry's willingness to buttress the rulings of a more confident and credible PCC.

In this letter, I have set out some of the problems I found at the start of the year and the progress that has been made in their resolution.

I accept that in its early years the PCC did not pass a number of the tests it was set; as you know, I was never surprised that each of the inquiries which scrutinised self regulation during the 1992/93 period found it wanting. The industry then took initial steps to strengthen self regulation, as set out in The Press Responds (Pressbof - May 1993). I have to conclude - as I suspect would most independent commentators - that there have been substantial developments since the publication over two years ago of Sir David Calcutt's review of press self regulation. In these circumstances, I believe we need to consider carefully again the significant achievements since the old Press Council was closed and identify anew those areas which are still giving justifiable reasons for concern. I have concentrated in my first few months at the PCC on addressing a number of the outstanding issues, placing the PCC onto a more stable and authoritative platform from which it can face the future with confidence and perform increasingly effectively. However, as far as I am concerned, the work here has only just begun. Any regulatory system must be responsive to the needs of all its constituencies and I have no doubt that the PCC and the system of self regulation it supervises will continue to develop.

After there has been an opportunity for you to consider this matter further in the light of my comments, I should be grateful to have your thoughts on how we might best proceed. My central aim is, after all, very close to what I believe yours to be: to ensure proper redress for ordinary people against abuses by the press, while preserving the essential freedoms of the press - without which any democracy will surely founder.

Annex A

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From the Secretary of State for National Heritage

The Rt. Hon.Virginia Bottomley JP MP

C95/5734/3655

The Rt Hon the Lord Wakeham
Chairman
Press Complaints Commission
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Dear John.

PRESS SELF-REGULATION

I am replying to your letter of 19 June to Stephen Dorrell. With your kind permission, I am publishing your letter today, together with this reply, as an Annex to the Government's response to the National Heritage Select Committee.

Before I comment on the points you have made, I think it might be helpful to set out the Government's view on press regulation. As you know, Sir David Calcutt's Review of Press Self-Regulation, published on 14 January 1993, recommended a statutory regime for dealing with complaints against the press. The report of the National Heritage Select Committee, published two months later, recommended a statutory ombudsman as an avenue of appeal against decisions of a new voluntary Press Commission which it also recommended.

My predecessor but one, Peter Brooke, made clear in publishing Sir David's review that the Government was very reluctant to see statutory regulation of the press.

This remains our position. The Government's instinctive preference is for fully effective self-regulation. I therefore welcome your appointment as Chairman from 1 January 1995, together with the clear mandate, which the industry gave you, to operate independently. Like my predecessor, I interpret your appointment as an earnest that the press was indeed determined to make self-regulation work. I am encouraged by the commitment of the industry, which you report, to ensuring effective self-regulation.

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I also welcome the changes which you have initiated at the Commission. In particular, I welcome the increased independence of the appointments system, and the improved credibility of the Press Complaints Commission, following the recent ruling against *The News of the World*. I am also pleased that you are looking at the involvement of the Commission and the public in developing the Code, and promoting progressive incorporation of the Code in contracts of employment of editors and journalists. I would like to see this continue and include freelance journalists.

Government, Parliament and the public are entitled to expect the highest professional and ethical standards from the press. Indeed, these words form part of the Code. There are various ways in which the present self-regulatory arrangements, much improved though they are, need further improvement. I remain concerned that the legitimate right of newspapers to seek and publish information is still not properly balanced with the equally important rights of individuals. Although I agree that the Press Complaints Commission has been generally successful in resolving complaints about inaccuracy, other types of complaint, and those concerned with infringement of privacy in particular, are not necessarily always resolved satisfactorily.

I should like, therefore, to discuss the various points in your letter one by one.

Appointments

I was dismayed to learn that the Press Complaints Commission's appointments system had been working in breach of its own Articles of Association from early 1993 until your arrival. The new appointments body, with distinguished membership and a clear lay majority, is a significant improvement, and one which can only bring further competence and authority to the Commission itself. I am pleased to hear, also, that the Press Complaints Commission has a strengthened and absolute lay majority.

Since the development of the Code (to which I will return below), is of crucial importance, I hope it will be possible to introduce a lay element into the Code Committee, and also to have some input from the public. The present arrangement, by which only editors sit on the Code Committee, is not best calculated to reassure the public about the Committee's independence from the industry. As a further means of improving two-way communication between the Committee which drafts the Code, and the Commission which adjudicates on its basis, it might be helpful if the Director of the Commission was also Secretary to the Committee.

Procedures

Certain press abuses could be prevented by the PCC bringing pressure to bear on the editor concerned at an early stage. This occurs when the Commission or the Privacy Commissioner gets to know, perhaps from the aggrieved party, that a story or photographs, obtained in breach of the Code, are being or are likely to be touted to newspapers. In appropriate cases, an editor or editors in general might be warned, if necessary on a telephone "hotline", that publication might compound any breach of the Code. The PCC should further make clear that if the newspaper went ahead and an ensuing complaint was upheld, the PCC's criticism would be considerably more severe. I understand that the Commission has informally issued such warnings already.

This facility should be well publicised so the public know that the PCC is willing and able to act to head off potential abuses in appropriate cases. The hotline could be advertised free and prominently in the press, giving the telephone number and address of the Press Complaints Commission and Privacy Commissioner. It is important that the hotline should be available inside and outside business hours.

I was pleased to see that you will look at Citizen's Charter-style performance targets by which members of the public will be able to judge the PCC's efficiency and responsiveness. One aspect might be the time taken to resolve complaints. I would also commend to you other Charter principles, for example on openness and supply of information about your organisation.

I know that you are already considering improvements to your publicity arrangements. This Department receives a number of complaints from members of the public who feel they have suffered from press abuses, but who do not know about the Press Complaints Commission or who feel that it is not worth complaining to it. I note that you have recorded an increase in complaints received and I know that you are concerned to publicise the achievements of the Commission. This might be combined with efforts, including the hotline, to publicise its powers and remedies.

It is important that journalists and editors, members of the public, and indeed members of the Press Complaints Commission itself should have a clearer idea of the reasons for the Commission's previous decisions. This argues for fuller summaries of adjudications published in PCC reports. At present, it is often difficult to discern which elements of a clause have and have not been breached by a journalist or editor, and how. If the adjudication summaries were more detailed they would help to establish something analogous to case law jurisprudence.

The Commission could also consider greater use of oral hearings. I accept that in some cases such hearings may delay or unnecessarily complicate the resolution of complaints. However, as Sir David Calcutt says at paragraph 3.80 of his *Review of Press Self-Regulation*, an unwillingness to hear evidence must make the resolution of disputed facts more difficult.

Sanctions are a crucial issue. I am pleased to see that the industry accepts that the Commission's decisions on matters relating to the Code are final and that any critical adjudication should be published in full and with due prominence. As I noted earlier, the recent case involving *The News of the World* demonstrated the Commission's increased authority. However, I am not clear what further action, beyond a reprimand, a proprietor might take against an editor who is in blatant breach of the Code. Should not proprietors consider dismissal in appropriate cases, and the Commission make recommendations to that effect ?

The Government is also attracted to the idea of a compensation fund for those whose privacy has been unjustifiably infringed by the press. This would enable the industry to acknowledge, in tangible form, that a newspaper had wronged a member of the public. It would represent a form of insurance - there are no doubt ways in which contributions of the different papers could be equitably assessed.

Annex A

The Code

The Government much welcomes the improvements to the Code of Practice which the industry has agreed, for example, on "jigsaw" identification and on use of surveillance devices. However, the balance of the Code still tilts too much towards the "right to know" and away from the legitimate rights and expectations of members of the public.

We believe that this could be remedied by tightening up the Code in several key places:

i. Clause 2 allows for an opportunity to reply only in response to inaccuracy. It is not clear whether this means inaccuracy as determined in a PCC adjudication or, as perhaps it should be, alleged inaccuracy. There should be a fair opportunity to reply to criticism, particularly for those who (unlike politicians) do not have ready personal access to the media.

ii. Clause 4 should define privacy more clearly. As you will know, the response which I am publishing today contains draft clauses on a civil remedy. I expect the Code Committee to study them most carefully, with a view to incorporating elements in the Code.

iii. Clause 8 requires that journalists should not remain on private property after being asked to leave. This seems a suitable provision as it applies to private curtilages like a garden path, but where the private property is, for example, an inhabited house only the strongest evidence of acting in the public interest could justify intrusion in the first place. Once again, greater precision of language would be helpful.

iv. Clause 10 requires journalists to make any intrusion into grief and shock with sympathy and discretion. But journalists do not have any right to intrude into grief and shock unless it is with consent or in the public interest.

v. Clause 11 says that "unless it is contrary to the public's right to know" the press should "generally" avoid identifying innocent relatives and friends of those convicted or accused of crime. It is not clear what these qualifications mean in practice, and they may nullify the effect of the clause. There is a case for removing at least one of them.

vi. Clause 12 appears to allow journalists to interview minors, without parental consent, about each other's welfare (it only proscribes interviewing a child about his or her own welfare). This provision seems to lack a rationale, and is further weakened by the undefined qualification "not normally".

vii. Clause 14, dealing with identification of victims of crime, seems to require only that journalists should obey the law. Should it not give victims more protection than is formally required by the law ?

viii. In clause 18, the public interest defences are not exhaustive and allow for a public interest defence beyond those listed. The published summaries of adjudications do not make clear whether this residual defence has been invoked in an adjudication and, if so, how. But the effect of this provision must be to weaken the Code and I suggest it should be clarified.

ix. There are no provisions in the Code on reporting of criminal convictions. The Rehabilitation of Offenders Act prohibits the publication of spent convictions, subject to some exemptions, but the Code does not say anything about the reporting of unspent, but irrelevant convictions. An obvious place for a provision on irrelevant reference to convictions would be in clause 15(ii), which deals with irrelevant reference to race, colour, religion etc.

x. There are no provisions on stories about the recently dead. The Privacy Committee recommended that stories about the recently dead should apply some of the principles which apply to stories about the living. There is a strong case for including such provisions in the Code.

xi. Finally, I would suggest incorporating the main points in the guidance, which appears from time to time in the reports of the Press Complaints Commission, into the Code which, being widely distributed, is more accessible than the reports.

Conclusion

I am grateful to you for outlining the improvements in the workings of Commission, which I welcome. I hope you will find it useful to have this statement of further changes we should like to see. It is particularly important to improve the Code of Practice to achieve a fairer balance between press and individuals, and to strengthen the PCC's procedures to provide better remedies for the public.

We share the aim of preserving the freedom of the press, and at the same time ensuring proper ways of acting against press abuses and providing redress where they do occur. I very much hope that the Commission and the industry will incorporate the further improvements put forward in this letter. In this way we shall move closer to a system of self-regulation which can better command the confidence of Parliament and the public as well as the press.

Yours sincerely

Virginia

VIRGINIA BOTTOMLEY

Annex B

Responses to the Lord Chancellor's and the Secretary of State for Scotland's consultation on a tort or delict of infringement of privacy

1. A tort or delict, if one were ever legislated, might be drafted along the lines of the wording included for illustrative purposes in this Annex below.

A right to privacy

2. (i) Every individual has a right to privacy comprising:

(a) a right to be free from harassment and molestation; and

(b) a right to privacy of personal information, communications and documents.

(ii) The right does not extend to material required by law to be registered, recorded or otherwise available for public inspection; but, subject to that includes the right where material has been disclosed to a particular person or for a particular purpose not to have it further disclosed to other persons or for other purposes.

(iii) Infringement of privacy such as to cause significant distress, nuisance or embarrassment to a person of ordinary sensibility in the position of the individual concerned is actionable as a tort/delict.

(iv) 'Personal information' means any information about an individual's private life or personal behaviour, including, in particular, information about:

(a) health or medical treatment,

(b) marriage, family life or personal relationships,

(c) sexual orientation or behaviour,

(d) political or religious beliefs, or

(e) personal legal or financial affairs;

and references to personal information, in relation to an individual, include any visual image or sound recording of that person.

Questions in the consultation included:

What matters are included in 'privacy'?

3. The general thrust of the responses was support for the paper's suggested approach of limiting the core components of privacy. Several people argued for the inclusion of personal behaviour and personal finances; no one advanced any strong reasons why they should not be included. The draft specifies health or medical treatment, marriage, family life or personal relationships, sexual orientation or behaviour, political or religious beliefs and personal legal and financial affairs. It assumes that professional, business and official matters, however, would probably be seen as falling outside the truly personal.

4. So far as freedom from physical intrusion is concerned, respondents generally agreed that 'harassment' and 'molestation' were acceptable definitions: judges and practitioners in particular seemed to be satisfied that the courts could apply these concepts. The Family Homes and Domestic Violence Bill, currently before Parliament, does not contain any definition of these words.

5. Respondents felt that there should be no specific reference to information putting a person in a false light, appropriation of identity or harassment by noise.

Whose privacy?

6. Respondents felt that only a natural person whose own privacy had been infringed should be able to sue (although the same act might infringe more than one person's privacy); the individual nature of the right would mean that a person would not be able to bring an action because another person's privacy had been infringed. Nor did respondents feel that it should be possible to bring an action on behalf of someone who was dead; or that legal persons, such as companies, should have a right to privacy.

Significant distress

7. Opinion was divided among respondents as to whether the right to a remedy for infringements of privacy should be expressed objectively or subjectively. The draft illustrates the objective approach, which is a right to be free from infringements of privacy which would cause significant distress to a person of ordinary sensibilities in the circumstances of the complainant. It would not allow the law to be invoked in the case of minor invasions of privacy which would cause a person only minimal distress. Several respondents noted the importance of the limitation to infringements causing significant distress in the context of disputes between neighbours.

8. Under an objective test a person would be able to seek an injunction to stop a threatened infringement if an ordinary person would suffer significant distress as a result of it. But where an infringement had already taken place, and the complainant wished to claim damages for it, it may be asked whether he should be awarded anything if he himself had not actually suffered significant distress.

Defences

9. (1) An infringement of privacy is not actionable if the conduct complained of was authorised by or under any enactment or rule of law.

(2) An infringement of privacy is not actionable if the conduct complained of is justified in the public interest by reason of its being undertaken for a purpose of legitimate public concern, such as:

(a) preventing, detecting or exposing crime, assisting in the recovery of the proceeds of crime, or exposing a miscarriage of justice in relation to a crime or supposed crime;

(b) the protection of public health or safety;

(c) the protection of national security or safeguarding the economic well-being of the United Kingdom; or

(d) exposing matters which –

(i) directly affect a person's ability to discharge his public, professional or commercial duties, or the duties of his employment or

(ii) directly relate to a person's fitness for any office, employment or profession (whether of a public or private nature) held or carried on by him, or which he seeks or is likely to seek to hold or carry on.

(3) Where the defendant/defender shows that the conduct complained of was undertaken for a purpose of legitimate public concern, it is for the plaintiff/pursuer to show that his right to privacy outweighs the right to freedom of expression.

(4) An infringement of privacy is not actionable if it is shown that the conduct complained of was reasonable and necessary for the protection of the person or property of the defendant/defender or another.

(5) An infringement of privacy is not actionable if it is shown that the conduct complained of

(a) was not intended by, and was not the result of recklessness or negligence on the part of the defendant/defender or any person for whose actions he is responsible; or

(b) was expressly or impliedly consented to by the complainant.

(6) An infringement of privacy is not actionable if it is shown that the conduct complained of consisted of a statement made in such circumstances as would in proceedings for defamation afford a defence of absolute or qualified privilege.

Consent

10. The draft illustrates the consultation paper's suggested middle course of having defences of express and implied consent. It assumes that to require express, or informed, consent in every case would be unduly burdensome for the media, but that the media should not be able to treat public figures as so different from everyone else that they may be said to have consented to publication of anything about them.

The basis of liability

11. There was a wide range of opinion on the question of the intention of the person committing the infringement. The draft illustrates the proposition that there should be a defence if the person could show that the conduct complained of was not intended or committed recklessly or negligently.

Lawful authority

12. The defence of lawful authority applies generally on the law of tort and delict and there is no reason why it should not apply in this area.

Necessary protection

13. There was a small majority in favour of a defence of necessary protection. It would be consonant with Article 8(2) of the European Convention on Human Rights to include the defence of necessary protection of a person or his property.

Information in the public domain

14. The consultation paper suggested that in many cases the fact that the information which was published was already a matter of public record should be a defence and that the same might apply in respect of publication relating to acts done in public. The problem with these defences is that there are circumstances in which they would probably not be available. Many respondents, for example, shared the view that personal information could in some circumstances retain its private nature even after publication. This has recently been confirmed by the Court of Appeal in *Regina v Broadcasting Complaints Commission ex p. Granada TV* (*The Times* 16 December 1994). The draft does not contain a specific defence to a new tort and delict that the information was in the public domain; it assumes that where one person has infringed another's privacy, a second person should not be able to rely on that infringement to provide a defence for repeating the story the following day. It is, however, suggested that the Privacy Committee was right to say that privacy should not attach to information which was required to be made publicly available, such as registers of births.

Public interest defences

15. There was significant support for the paper's approach of listing those matters which would be considered as being in the public interest to know. It is suggested that a bald 'public interest' defence by itself would be too general: a defendant would have to be able to say why it was in the public interest, or a matter of concern, that a particular story should be published. However, there is force in the argument, which several people advanced, that the categories of public interest could not be closed and that it would be too inflexible to have an exhaustive list.

16. The draft illustrates the proposition that it would be a defence that the conduct complained of was justified in the public interest by reason of its being undertaken for a purpose of legitimate public concern. This might include information about crime, public health or safety, national security or economics, the discharge of a public function or fitness for public office.

17. The protection of privacy inevitably raises the issue of freedom of expression, (whether or not the United Kingdom was a party to the European Convention on Human Rights). The weight of the responses pressed for more of a balance to be struck between the two rights. The draft illustrates one way of doing this: to provide that once the complainant had shown an infringement of his privacy, and the other party had shown there was a public interest in so disclosing the information, it would be for the complainant to show that his right to privacy outweighed the other party's right to freedom of expression.

18. The draft would comply with both Articles 8 and 10 of the Convention. It does this by referring explicitly to the right to freedom of expression, by having as defences the specific restrictions in Article 8(2), and by the combination of not having an exhaustive list of matters which are in the public interest, and requiring the complainant to satisfy the court that his right outweighed the other party's right to freedom of expression.

Defences in Article 8(2)

19. The draft illustrates a suggestion from some respondents, that the civil remedy might include as defences the specific legitimate restrictions on the right to privacy which are set out in Article 8 of the European Convention on Human Rights: national security, public safety or the economic well-being of the country, the prevention of disorder or crime and the protection of health or morals.

Privilege

20. It was generally agreed by respondents that there should be a defence akin to that of absolute and qualified privilege in defamation actions.

Remedies

21. In proceedings for infringement of privacy the court may:

(a) award damages;

(b) grant an injunction/interdict or interim interdict;

(c) order an account/accounting and payment of profits which the defendant/defender has made by reason of the infringement;

(d) order the delivery/delivery up to the plaintiff/pursuer of all articles or documents which have come into the defendant's/defender's possession by reason of the infringement.

22. The great majority of respondents agreed that the two principal remedies should be damages, and injunctions or interdict. In particular, most respondents believed that people would be offered insufficient protection if injunctions and interdict could not be granted. The draft follows the existing rules on the availability of injunctions and interdict. It also includes subsidiary remedies of accounting for profits and delivery of material obtained by the infringement.

Annex C

Infringement of Privacy
Consultation Paper

Responses received by 25 November 1993

Individuals

Professor E M Barendt
District Judge Berkson
Sir Thomas Bingham MR
Miss Sheila Black
Reverend M C Bligh
Mrs P J Brown
Sir Stephen Brown P
John Burgess
Sir David Calcutt QC
Kenneth J Campbell
Jonathan Caplan QC
Peter Carter-Ruck
William Cash MP
Simon Chalton
Mrs Moira Coleman
Elizabeth Cooke
Professor S M Cretney
John Davies
Owen Davies
The Lord Donaldson of Lymington
David Eady QC
Professor David A Elder
Professor D J Feldman
Judge Fricker
District Judge Greenslade
Mrs Susan Hammett
Nigel Harvie
E Hellens
Professor Paul Helm
Brian Hepworth
Miss B E Horne
Simon Jenkins
Professor John Last
Graeme T Laurie

Annex C

Mrs D Mann
R Mapp
Professor Basil Markesinis
Roper Mead
Jack Meads
Professor Colin Munro
Lord Murray
Michael Nestor
Sir Donald Nicholls VC
Margaret Noble
Dennis W O'Hanlon
A Scott Plummer
Jeffery Robinson
John Rubinstein
Francis R H Silvester
John Spencer
Hilary Spurling
Professor Mark Thompson
M B Thorne
K M Trenholme
Victor Tunkel
Professor Clive Walker
J Warman
H Weisl
Susan Wood
Philip Ziegler

Organisations

Advertising Association
Advertising Standards Authority
Anti-Counterfeiting Group
Article 19
Arts Council of Great Britain
Association of British Editors
Association of Chief Police Officers in Scotland
British Bankers' Association
British Broadcasting Corporation
British Photographers' Liaison Committee
Broadcasting Complaints Commission
Broadcasting Standards Council
Central Independent Television
Channel Four Television
Citizens' Advice, Scotland
Council of HM Circuit Judges
Court of Session
Data Protection Registrar

Department of the Environment
Department of Health and Social Security (2)
Department of National Heritage
District Judges Association
D-Notice Committee
General Council of the Bar
Granada Television
Guild of British Newspaper Editors
Home Office
Hoskyns Group plc
Independent Television Association
Independent Television Commission
Independent Television News
Inland Revenue
Institute of Legal Executives
Institute of Practitioners in Advertising
JUSTICE
Law Society
Law Society of Scotland
Liberty
Local Government Management Board
Matthew Trust
Ministry of Government Services, British Columbia
National Association of Citizens Advice Bureaux
National Association of Data Protection Officers
National Computer Users Forum
National Society of Clean Air and Environmental Protection
National Union of Journalists
News International plc
Newspaper Society
Press Standards Board of Finance Ltd
Radcliffes & Co
Right to Peace and Quiet Campaign
Scottish Daily Newspaper Society
Scottish Newspaper Editors' Association
Scottish Law Commission
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Sheriffs' Association
Simon Olswang & Co
Society of Authors
Society of Labour Lawyers
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