B First extract from *A Press Free and Responsible* by Professor Richard Shannon (pub. John Murray, 2001)

greed and apathy were apt keynotes for his assessment of the newspaper industry's performance in self-regulation since 1 January 1991.

> The Press Complaints Commission is not, in my view, an effective regulator of the press. It has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but also public confidence. It does not, in my view, hold the balance fairly between the press and the individual. It is not the truly independent body which it should be. As constituted, it is, in essence, a body set up by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.[53]

Sir David recommended as a remedy the constitution of a statutory Press Tribunal as set out in his Privacy Committee's report of 1990, and as supplemented in his present review. The dread vision had come to be.

# CHAPTER SIX

## *Calcutt strikes again – and misses: January–November 1993*

> 'The government accepts that the Press Complaints Commission, as at present constituted, is not an effective regulator of the press. It is not truly independent and its procedures are deficient. Sir David's detailed analysis of these shortcomings is compelling. We also recognize the strength of the case ... for a statutory tribunal with wide-ranging powers. At the same time, we are conscious that action to make that body statutory would be a step of some constitutional significance, departing from the traditional approach to press regulation in this country.'
>
> Peter Brooke MP, Secretary of State for National Heritage, House of Commons, 14 January 1993

> 'Journalism is a rough old trade, and long may it continue to be so.'
>
> Gerald Kaufman MP, House of Commons, 10 June 1993

Great was the lamentation and wringing of hands in the industry as the dread vision of Calcutt disclosed itself. Well-sourced leaks in the *Guardian* and the *Independent* had accurately predicted 'dire reprisals for the press'. Calcutt had indeed gone solo – almost certainly his initial great mistake. Had he consulted former colleagues, he might have hit nearer the bullseye of acceptability by the government.

Calcutt cited six instances upon which he founded his verdict of the PCC's failure and its necessary demise: the *Sport*'s contempt when it refused to publish an adjudication; the *People*'s contempt in the Princess Eugenie case; the PCC's handling of the Morton serialization affair; and its feebleness in the Ashdown, Bottomley and Mellor scandals.

The Press Complaints Tribunal as prefigured in 1990 would be presided over by a judge or senior lawyer appointed by the Lord Chancellor. He would sit with two lay assessors drawn from a panel appointed by the Heritage secretary. Its duties would be to draw up and review a code of practice; to restrain publication of material in breach of the code; to receive complaints (including third-party complaints) of alleged breaches of the

code; to inquire into those complaints; to initiate its own investigations in the absence of a complaint; to require a response to its inquiries; to attempt conciliation; to hold hearings; to rule on alleged breaches of the code; to give guidance; to warn; to require the printing of apologies, corrections and replies; to enforce publication of its adjudications; to award compensation; to impose fines; to award costs; to review its own procedures; to publish reports; and to require the press to carry, at reasonable intervals, an advertisement to be specified by the tribunal indicating to its readers how complaints to the tribunal could be made.

Legal representation would be permitted, with a right of appeal; but the waiver against recourse to the courts would be reintroduced, as the 1990 report envisaged. The 1990 recommendation for three new criminal offences for press intrusion was re-recommended; with, additionally, a civil tort of infringement on privacy. Calcutt recommended further that the Data Protection Act of 1984 be amended in relation to misrepresentation or intrusion, and that legal restrictions be imposed on press reporting relating to minors and the interception of telecommunications.

All this was designed, Calcutt insisted, 'to make a positive contribution to the development of the highest standards of journalism, to enable the press to operate freely and responsibly, and to give it the backing which it needed, in a fiercely competitive market, to resist the wildest excesses'. It was not designed to suppress free speech or to stultify investigative journalism.[1]

Outraged protests from the industry predictably poured forth. Editors declared their 'total opposition'. Kelvin MacKenzie of the *Sun*: 'We're not going to have some clapped-out judge and two busybodies deciding what goes into our paper.' Lord Rees-Mogg warned that the state would use any extension of its power for unsavoury ends. Sir Frank Rogers of the Newspaper Publishers Association lamented a return to state regulation which had last existed in 1695. For the Newspaper Society David Newell denounced a regime more draconian than that applied to the broadcast media, calculated to enhance the power of the state and weaken the rights of citizens. The privacy laws, grumbled others, would prove a 'villains' charter'. Lord McGregor vehemently rejected the allegation that the PCC had failed as a self-regulatory body. 'If the Calcutt recommendations on the press are as they have been reported,' he announced, 'I am terrified – terrified because I grew up in a democracy and I wish to carry on living in one.'[2] A satirical piece by Brian MacArthur made the point that Calcutt would have had the editors who reported the royal marriage debacle fired; yet they were accurate. What then?[3]



This was precisely the point McGregor, in his own way, seized upon. In his 'note' to Calcutt on 11 December,[4] a few days after the announcement of the separation of the Prince and Princess, he gave an account of his interviews with Mackay and Wakeham and one of the Prime Minister's private secretaries in the aftermath of his abortive statement of 8 June. McGregor then disclosed: 'I told ministers that, if the Commission were criticized for a failure to deal effectively with the reporting by the press of the publication of Mr Morton's book and related matters, I should be prepared to issue a public statement containing a narrative of events.'[5]

Calcutt's treatment of the PCC – described by the *Daily Telegraph* as 'savagely critical' – certainly constituted such an incitement. McGregor was clearly outraged that Calcutt – 'a lawyer', as he witheringly termed him in his Andersen lecture, 'whose dislike of the press is matched only by his distrust of self-regulation' – had ignored the redeeming implications of his narrative for the Commission. What McGregor narrated was the story of how he had liaised with the Palace early in 1991, how he had persuaded himself to believe the Palace rather than Lord Rothermere, how he planned the announcement of what he thought was a careful and well-timed, if a little emotional, rebuke to the press at the crisis of the Morton serialization, of how sickening awareness came upon him that both the Palace and the Commission had been deceived by the Princess, how he had related these matters to senior ministers, how the Queen's private secretary had apologized to him and had offered his resignation, and how the PCC had been stranded high and dry, an object of mockery by its own industry – an industry which, for all the public abuse heaped upon it, had done its job well.

As it happened, McGregor had no need to issue his narrative of events. His note included in Calcutt was indeed the prime reason why a PCC mole – who could it have been? – leaked the report before its publication. Victimhood was the readiest antidote to savage criticism. It served the interests also of people at the Heritage department who feared that a 'turning' by John Major in Calcutt's direction could lead to a 'battle royal with the press'.[6] This fear was reciprocated at the Downing Street Policy Unit, with which the PCC by now was on usefully intimate terms. The scoop was handed to the *Sunday Telegraph*. Frank Rogers, who engineered the affair, did the rounds on Saturday night to alert the other Sundays. Brian Hitchen was also in on it. It was, as Mark Bolland recalls, 'wonderful drama'.[7]

With David Hencke to the fore, the *Guardian* was the first daily off the mark and published the leaked document in full on 12 January,

followed immediately by all the other papers, to general public astonishment. They seized immediately on the implications of McGregor's story compromising Calcutt's position. The *Times*'s media team took the point the next day: the leak had 'effectively killed the prospect of statutory control of the press'. McGregor announced his regret at the publication in advance of the report 'of a small part of the evidence the Commission had submitted to him'; and his regret particularly at Calcutt's including McGregor's account of his conversation with Lord Rothermere, which he had requested be omitted. Yet for all that, when being interviewed about his 'sadness' at the Princess's 'mockery' of his attempts to protect her against the tabloids, McGregor 'expressed quiet satisfaction over the damaging impact the leaking of his letter to Sir David Calcutt had on the campaign to muzzle the press'.[8]

*2*

Several developments took shape amid that 'damaging impact' on the prospects for statutory regulation of the press. One consequence of McGregor's revelations was a backlash against Diana for her manipulativeness. Her image 'as an innocent victim of the media', as George Jones reported for the *Daily Telegraph*, had been 'badly dented'. McGregor added the consideration that the Prince was entirely absolved of any suspicions that he had been a party to briefing the press about his marriage, and held that the Princess 'had in practice been invading her own privacy'.[9] This was a doctrine which in due time would come to figure largely in the PCC's interpretative repertoire.[10]

Certainly Calcutt was well upstaged long before official (and hurried) publication on 14 January. A cartoon by Brookes in *The Times* the day before depicted Diana pulling a rug from under Sir David. All this could only be encouraging to Patsy Chapman and the Code Committee. They were planning to get in ahead of Calcutt by amending the Code to cover clandestine bugging devices and interception of telephone calls.[11] This, after all, had been on the agenda ever since the fallout over the Mellor scandal and the rejected initiative to strike a deal with the Heritage department the previous October. There was, as it happened, extra topical immediacy in the matter. A Murdoch magazine in Australia had published a full transcript of a bugged intimate conversation between the Prince of Wales and Camilla Parker Bowles. Both the *Mirror* and the *Sun* followed up with edited extracts. The industry was fortunate in the circumstance that



its, and the Prince's, guilt in 'Camillagate' was somewhat offset by the Princess's innocence now being at a discount.

Then there was the impact that Calcutt's draconian heavy-handedness had on other critics of self-regulation. Both Soley and Kaufman found Calcutt indigestible; too concerned, in Kaufman's words, to protect the privacy of public figures 'in the palaces of Westminster or Buckingham'. Geoffrey Robertson held, as ever, that the industry had only itself to blame for the 'inevitable conclusion' by Calcutt that self-regulation had failed. 'The industry has for many years sought to fob off demands for a privacy law by financing portentous voluntary bodies – the Press Council, and then the Press Complaints Commission – which are little more than confidence tricks that have failed to inspire confidence.' Yet Calcutt, argued Robertson, compounded the problem rather than remedying it. 'The press cannot be improved by state-appointed censors.' Calcutt's proposed tribunal and his criminalizing of press intrusion were equally misconceived. 'Privacy will not be protected by sending journalists to jail, and press freedom will not be safe in the hands of a government-appointed tribunal issuing on-the-spot injunctions and directing publication of insincere apologies.' Having thus demolished Calcutt, and being once more of immense service to the newspaper industry's system of self-regulation in spite of himself, Robertson could only envisage hopefully a 'new settlement between the press and the public' coming out of political debate on Calcutt, leavened by awareness of the need to enact the European Convention on Human Rights to which, since its inception, Britain had been a signatory.[12]

If dissension among critics of press self-regulation was now exposed by Calcutt's impact, dissension among ministers was not less likely to obtain. Amid reports that MPs on all sides were recoiling from 'vengeful endorsement' of the Calcutt proposals, there was speculation about splits in the Cabinet over the government's next move. There was embarrassment at McGregor's disclosures about the extent of awareness among leading politicians as to what was afoot. Both Kenneth Baker and Gus O'Donnell denied they had been briefed by McGregor in December 1991 as relayed by McGregor. But there was no doubt that Mackay and Wakeham, the chairman of the Cabinet home affairs committee, had been alerted by McGregor in June 1992. However, when asked in the Commons when he was first apprised of the contents of McGregor's note to Calcutt, Major replied: 'when it first appeared in the national press'. Kenneth Clarke, the Home Secretary, made the same reply.[13]

On 13 January, Major chaired a two-hour Cabinet to consider how to handle Calcutt. It was, after all, very strong medicine. The 'signals from Downing Street', according to Michael White of the *Guardian*, were that 'although some ministers, including Mr Major, have privately expressed considerable irritation with press conduct, there is widespread caution about the known pitfalls of press censorship'.[14] Philip Johnston's report for the *Daily Telegraph* was that 'ministers were said to be unanimous in their opposition to a statutory tribunal', but they were thought to favour some kind of privacy legislation.[15]

No doubt the words of one 'top Fleet Street executive' in June 1992 about the Tory party's owing a debt that might have to be called in remained applicable to the case. So did the words of Lord Deedes in the Lords on 1 July 1992, and those of the 'old Conservative sage' (assuming him to be other than Deedes) reported by Max Hastings on 13 July.[16] Clive Soley alleged that newspaper editors were deliberately firing 'warning shots across the bows' of the Cabinet. There had been, he was sure, 'evidence for some time that newspapers at a senior level were going to go "nuclear" on the government if they went down the Calcutt road or supported my bill'.[17]

The ultimate fortunes of the Soley Bill and the forthcoming report of Kaufman's National Heritage committee gave ministers plausible markers in the middle future to delay making risky decisions. Opinion at the *Daily Telegraph* was that the Princess's complicity in the Morton book made it hard for the government to use the royal family as a 'stalking horse for legislation against the press'. So did the disclosure that the Queen's private secretary apologized to the PCC for misleading it over the Princess's involvement.[18] Major was known to loathe the press generally and the tabloids in particular, but consensus in the industry was that he would back away from state regulation but take up the privacy issue and insist on the industry's stiffening the Code of Practice.

In Cabinet the difference was split accordingly between Calcutt's and the industry's definitions of press freedom. Peter Brooke announced in the Commons on 14 January that the government accepted that the PCC 'as at present constituted' was not an effective regulator of the press. It was not truly independent and its procedures were deficient. Sir David's detailed analysis of those shortcomings was compelling. Ministers also recognized the strength of his case for a statutory tribunal. 'At the same time we are conscious that action to make that body statutory would be a step of some constitutional significance, departing from the traditional approach to press regulation in this country.' The government was reluctant so to do. A more persuasive case would need to be made out. In coming to a final view the government would want to take into account the debate on the private member's Bill brought in by Mr Soley. Ministers would also take into account the report of the inquiry into privacy and media intrusion which the National Heritage select committee had set in train. As far as the PCC was concerned, it followed that the government would expect 'reform' in respect of its independence from the industry and improvement in its procedures.[19]



Thus press self-regulation, having been let free by Calcutt in 1990 in 'one final chance to demonstrate that it can put its house in order', now in 1993 escaped, in its disorderly house, his condemnatory clutches. But the industry would have to pay the price of this second emancipation. That price would be stiff. The pressures from now on would be more onerous and intense than they had been in the second half of 1990. Then the industry had been largely left to its own devices. Now it would have the government breathing down its neck. There were limits to the credit the industry could call on from its account with the Tory party. As Sir Frank Rogers put it on behalf of the NPA, 'modifications to the self-regulatory system will be the subject of dialogue with the Government'.[20]

*3*

In the matter of amending the Code of Practice, things were already far advanced. The Code Committee's plans to get in ahead of Calcutt were being circulated to the five industry bodies contributing to Pressbof. There were consultations between Pressbof, the Code Committee and the PCC. The Commission set up its own review of Calcutt.[21] A meeting of twenty-one editors and senior newspaper staff representing every national newspaper – a gathering hailed in the House of Commons as 'historic'[22] – met on 22 January under the auspices of the NPA to pronounce ritual anathemas on Calcutt. Its more urgent purpose was to endorse proposed changes to the Code to provide safeguards against eavesdropping and bugging, and to endorse arrangements for a lay majority on the PCC to underline its independence from the industry.[23]

The lay majority decision was very much an industry management move, via Pressbof, to placate government. It was not liked, and never has been liked, by editors and journalists. As Roy Greenslade pointed out, there was a déjà vu effect: shades of the old Press Council. Editors decried the move