C Second extract from *A Press Free and Responsible*

# CHAPTER FOURTEEN

## *Death of a Princess: the great Diana stampede, September–November 1997*

'So within four weeks of her death in Paris, the late Diana, Princess of Wales, has won a posthumous victory that she never would have achieved while she was alive.'

Brian MacArthur, *The Times*, 24 September 1997

'It must be the first time in history that the failings of one drunken driver have changed the way a nation's press can operate.'

Christopher Oakley, president of the Newspaper Society, Young Newspaper Executive Conference, Durham, 5 October 1997

Diana, Princess of Wales, died as a result of a car crash, along with her lover Dodi Fayed, in the Pont d'Alma underpass in Paris on the night of Sunday 31 August. They were being pursued by a gaggle of paparazzi, whom they had tried to elude on departing from the Ritz Hotel. The official French investigation found that the cause of the crash was that the driver was drunk and travelling too fast; but this was not established for some days. In the immediate aftermath of the tragedy, its cause seemed only too apparent. Her brother, Lord Spencer, articulated the general presumption: the press 'has her blood on its hands'.[1]

Another general presumption then was that press self-regulation was thrown back into the crucible. A weary time was foreseeable, going over all the old ground again. Gerald Kaufman wanted the House of Commons to disinter his Heritage committee report of 1993. 'The press will be told that it has not heeded the warnings of successive governments to "put its house in order"', commented Simon Jenkins. 'The familiar arguments will be taken down and dusted off.' Nobody could pretend that yesterday's horror was 'anything but a stain on the journalistic escutcheon', he conceded. 'Yet I cannot think of a remedy.' Privacy legislation was not a remedy. 'Such laws exist in France, Germany, Italy and many American states. The French is



one of the toughest. Reformers should note where the past month's gross breaches of personal privacy occurred.'[2]

A crucial point. Had the tragedy, in comparable circumstances, occurred in London, press self-regulation almost certainly would have been swept aside in a mood of public and parliamentary revulsion at tabloid behaviour. The fact that that same public devoured the gossip that the newspapers titillated them with, and ogled the photographs that the newspapers purchased from the paparazzi, would not have been allowed as a plea in mitigation by the industry. There were brave souls who pointed out that those with blood on their hands were the people, themselves included, who bought the tabloids to scrutinize personal details of Diana's life.[3] Their voices were drowned in the din of a nation's exculpatory remorse. As it was, the intensity of the guilty panic in newsrooms all over the country almost amounted to a collective confession: the industry standing over the Princess's corpse with a bloodstained knife in its hand.

Lord Rothermere ordered his papers not to buy paparazzi material without his knowledge and consent. The *Daily Mail* headlined: 'Mail leads way in banning paparazzi pictures.' This infuriated Charles Moore at the *Telegraph*. He denounced Rothermere and English for gross hypocrisy: the *Mail* had been one of the leaders of the pack, he insisted. Then the *Mail* compounded its sin by a sensational front page on 2 September depicting a thoughtful, kilted Prince Charles: 'Charles weeps bitter tears of guilt.' This 'imaginative journalism' provoked enormous outrage, especially of course among pro-Charles circles for whom the *Daily Telegraph* was always the flagship. This spat developed over the coming two weeks into what Brian MacArthur called 'Fleet Street's biggest brawl in living memory'.

As journalists brawled, accusatory presumptions poured forth from the public. Media celebrities led the way. Martyn Lewis, who had fronted the BBC's presentation of the tragedy, demanded legislation. Martin Bell, the much publicized new independent MP for Tatton, saw it as a matter of the press's 'quite literally hounding to death' its noble victim.[4] Alan Rusbridger later told a Guild of Editors' conference that 'in newsrooms there was a lot of soul-searching and a sense of shame'.[5] Assuming that media self-regulation was 'unlikely to satisfy any longer', Frances Gibb assessed 'legal options'.[6] Clive Soley recommended that the first requirement was to redirect anger from the paparazzi to the proprietors and editors who purchased their photographs. A truce was declared in the industry on the privacy issue: the last thing Rusbridger and his allies wanted was a privacy law courtesy of the Diana stampede.

In the shamed and soul-searching *Guardian* Geoffrey Robertson QC, inveterate enemy of self-regulation and despiser of the PCC as a mere million-pound insurance policy taken out by the industry barons, trusted that Diana's untimely death would in due course permit 'a more rational discussion of the need to protect privacy than has come from the present surge of righteous anger against the paparazzi'. Her very absence as an 'example in the debate' Robertson thought would be helpful: 'she never was a paradigm case because of the Faustian bargain she seemed to have made with the media at times'. Surely, it was not beyond 'our wit or our language', insisted Robertson, 'to define laws which protect private places and intimate relationships but not business dealings or exercises of power'.[7]

The industry, naturally, defended itself on the best ground it had. In *The Times* Wayne Bodkin pointed to the 'tragic irony that France, the country with one of Europe's strictest privacy laws, is where Diana, Princess of Wales was killed pursued by paparazzi'.[8] Paul Connew, Mirror Group executive, contributed the thought that 'hard cases make bad law. A cliché, but true nonetheless.'[9] The *Press Gazette* praised the Prime Minister and the Culture secretary for disdaining a knee-jerk reaction to the public backlash. 'It would have been an easy and populist move to announce that it would introduce a privacy law.' As the true events unfolded, ministers' caution proved wiser than the broadcasters' and back-bench MPs' attempts to make the press a scapegoat.[10] And, naturally, the industry looked to its million pound insurance policy.

## 2

From this moment two dominant facts determine and explain the course of events bearing on Britain's newspaper press industry over the coming three months. The first was the industry's awareness that it was on the run, and that the only defences it could mount would be such as were compatible with retreat in disorder. The second was Lord Wakeham's deftest exploitation yet of opportunities offered by problems.

On 2 September there were reports that the chairman of the PCC was calling for an urgent review of harassment by international paparazzi. Lord Wakeham had begun 'immediate talks with newspaper editors' to discuss the 'seemingly insatiable demand for pictures of public figures'. Wakeham's discussions, it appeared, would assess the difficulties of dealing with a problem which crossed many national boundaries. He insisted that he would make no comment on the circumstances of the Princess's death



until the French police had completed their investigations. But he said: 'We can – and must – think very seriously about the problems caused by international paparazzi which the accident has so dreadfully highlighted.' It would be some time before the details of what happened were revealed. Lord Wakeham would keep the Secretary of State for Culture, Media and Sport informed of the progress of their review.[11]

The industry's first respite on the run was an announcement from a Downing Street spokesman reaffirming the Prime Minister's view that self-regulation was the best way ahead. 'Obviously what has happened is going to fuel a huge public debate, and for now he will just let that debate take place without Government having to rush to any significant judgement, and also mindful of the fact that the newspaper industry will be taking a good look at what lessons they may learn.'[12] The immediate lesson was to move quickly in the direction of protecting Diana's children.

The Code Committee was alerted to meet on 17 September, by which time Wakeham and English would have concluded their consultations with national editors. 'Action necessary consequential to the death of Diana, Princess of Wales', was the first substantive agendum.[13] There were calls for a complete ban on newspapers accepting shots from international paparazzi unless within the new strict public-interest definitions; calls for newspapers which published paparazzi pictures to print the name of the photographer and state whether the photos had been taken with or without consent. David English declared himself glad that the government was not rushing to judgment in spite of much incitement from MPs and celebrities. The Code Committee would be discussing 'snatch pictures', he announced, and whether these should be banned completely or whether that would damage publication, 'because some paparazzi pictures are going to have real meaning. If there is a ban, there could be a picture that has gone round the world but might never be seen in Britain.'[14]

A paper, 'Dealing with the Paparazzi', was sent by Wakeham to Chris Smith, the Secretary of State, on 5 September in advance of their planned discussion on the 8th. 'Bluntly', Wakeham told Smith apropos of the relevant Code Clauses 4 and 8, 'very few of these parts of the Code have ever been tested in relation to the foreign paparazzi – partly because Diana, Princess of Wales had, in truth, a patchy record on complaining'. A complaint had been made to the PCC about paparazzi shots published in the *Mirror* of the Princess and the Duchess of York on holiday in France last July. 'That would have been an excellent opportunity to set out ground rules in this area. However, the complaint was soon withdrawn – and speculation

followed that the Duchess of York had encouraged the photographs to be taken.' It was not a domestic British problem. And in any case, what precisely distinguished a paparazzo from a freelance? There was also the public-interest aspect. There was unlikely to be a definitive solution. 'The PCC and the media can deal with matters *at publication*, they can – by their actions – reduce the market place; but they cannot change the behaviour of the paparazzi themselves, or be held responsible for it.'

Legal remedies such as stalking legislation or copyright law under the Berne Convention, continued Wakeham, were unlikely to do much. There were possible changes to the Code: tightening requirements for editors about accepting material; a preamble could be brought in with a 'paparazzi clause'; it would be up to editors to demonstrate the checks they had made. The public-interest criterion in Clause 9 might be made more stringent: 'overwhelming'? Photographers could be named. There might be measures to crack down on 'media scrums': harassment by 'creating collectively an intimidating scrum'. Photo agencies might be brought into the ambit of the Code. The definition of private property could be widened to include churches and restaurants.

Some 'private thought' might also be given, suggested Wakeham, to the question of the relationship between press and Palace. The focus of the paparazzi had been on Diana. 'It is likely that in time their attention will turn to HRH Prince William, especially in view of his physical similarity to his mother.' The Code at present covered him only to the age of 16. Wakeham's discussions with, in particular, national tabloid editors were to begin the next week commencing 8 September. 'They will be crucial in agreeing to a tightening of the Code and giving a lead to the rest of the industry.' The PCC would then initiate Code amendments. 'Urgent discussions should take place with St James's Palace to discuss the particular situation of Prince William. Buckingham Palace should also be consulted on the question of Balmoral and Sandringham.' There should be consultations also with press commissions and councils in other countries to assess the scope for international action.[15]

On 5 September, the day of the Princess's funeral, the *Daily Telegraph* had the broadsheet pleasure of announcing the names of the tabloid editors against whom Lord Spencer had a particular animus and who were barred from attending at the Abbey: Stuart Higgins of the *Sun*, Philip Hall of the *News of the World*, Paul Dacre of the *Daily Mail*, Richard Addis of the *Express*, Piers Morgan of the *Mirror* and Bridget Rowe of the *Mirror on Sunday*. Spencer's design was to humiliate the papers 'as publicly as possible



by casting them out of the event'. They responded by 'studiously not rocking the boat'. (A report that several tabloids had contacted the Royal National Institute for Deaf People asking for lip-readers 'to examine footage of the funeral and tell them what the grieving members of the Royal Family say to each other', as Joe Saxton, the charity's campaign director put it, 'defies belief'.[16])

Wakeham was due to go public at various industry bodies; English was booked for the *Breakfast with Frost* programme. Earl Spencer had lacerated the press in his Abbey address. Guy Black put 'some lines together' to assist.

> No law in this country or any other could ever have prevented the appalling events that took place in Paris last Sunday. The marketplace for the paparazzi is global – and global legislation on privacy or harassment is not possible. . . .
>
> Where no domestic or global law is a possibility, the obvious answer lies in strengthening self-regulation – and in encouraging editors to think again about their own judgements in the reporting of private lives.
>
> The editors' Code of Practice already does a lot of good – in particular in regard to children. While the foreign press has from time to time carried pictures of Prince William at Eton, no British publication has done since he began there. That is a good start. So the press's treatment of Prince William – which recognizes that he is vulnerable – probably points the way forward. . . .
>
> The Press Complaints Commission is conducting an urgent review of this area to look at possible Code and any other changes. Editors are co-operating fully, and the PCC expects to complete the review very quickly. . . .
>
> Thought therefore needs to be given in the minds of all editors about how far they should go in reporting the lives of public figures, and those who are related to public figures often only by the accident of birth. No law can do that for them. It is up to their own judgement and their own self-regulation.
>
> For all of us, things will never be the same again – but in particular for the public which reads newspapers and for the editors who are responsible for them. Self-regulation has improved a lot of things over the last few years. But self-regulation must also be civil regulation – recognizing the civil responsibilities of editors as well. That is the challenge now.[17]

Wakeham set off on his tour of editorial offices 'in the light of Earl Spencer's attack on the press', to discuss reform and tighter controls on privacy. Sir David English on *Breakfast with Frost* announced that Associated Newspapers 'would never use paparazzi pictures of William while he is growing up'. He believed no other paper would either. 'I believe we in the press have got to listen very much to what Spencer said – you can't ignore

him.' Rusbridger confessed to broadsheet guilt for buying from paparazzi. 'The Broadsheets do like to have their cake and eat it.' Piers Morgan undertook to work closely with the PCC to protect the young Princes. 'He concedes that the media must change after the Princess's death, but argues that she had a more complex relationship with broadcasters and publishers than Lord Spencer had indicated in his angry speech.'[18]

The Prime Minister joined calls for newspapers and their proprietors 'to respond to public anger over the activities of the paparazzi'. Mr Blair made plain that he was 'taking a particular interest in the deliberations this week between the Press Complaints Commission and Editors about tightening self-regulation'. Blair, sceptical about the advantages of privacy legislation, was 'looking to the press to order tough new action'. He held that, were proprietors to announce that they would no longer use intrusive photographs from the paparazzi except in cases justified by the public interest, there would be no market in Britain for their work. On *Breakfast with Frost* he said it was a problem requiring 'more than the letter of the law'. Over the past few days ministers had re-examined the arguments for a privacy law, but remained dubious. However, it was possible that legislation could be introduced to prevent harassment by photographers using long-lens cameras if, for example, the press showed no signs of banning such behaviour on its own account.[19]

At the London Press Club on 9 September Wakeham rehearsed the main themes already outlined on behalf of the Commission. A deal relating to the Princes pointed the way forward for editors and the Commission across a wider range of fronts. He believed editors would heed the words of the Prime Minister. A 'watershed in the mood of the country and in the mood of the press' had been reached. The immediate task was to draw up new rules for incorporation in the Code of Practice. 'This is an important time to get a tightening of the Code because I don't want to miss that mood.' Were it missed, 'if action is not rapidly forthcoming, time really could be called in the Last Chance Saloon – and the press would thoroughly deserve it'.[20]

Time was moving on towards the crucial Code Committee meeting on 17 September. An intriguing circumstance relating to this was that the *Daily Telegraph* editor Charles Moore was due to make his debut as a NPA nominee on the Committee. He and David English had been feuding for over a week. Harry Roche felt obliged to assure the *Telegraph* people that English was not really a 'spider figure at the centre of a web of newspaper excess'. Conrad Black, proprietor of the *Telegraph*, likened English to Al Capone and asked: 'Is Sir David English a suitable chairman of the Code



of Practice Committee? . . . He should repent or resign.'[21] There were many, including former Tory ministerial grandees, who agreed with him. Paul Dacre, editor of the *Daily Mail*, was scornful of Moore as someone who had been in Fleet Street for five minutes. Explaining the origins of the *Telegraph* 'jihad', he asserted that Diana hated the *Telegraph* as the 'house-organ of that camp of courtiers who, after the separation, had pumped out black propaganda against her, much of its centring on her sanity'.[22] So it was all the odder that when Moore appeared at the Code Committee he had in his pocket a letter from Earl Spencer to be read to the Committee. This letter Spencer had faxed to Moore, not to English. Spencer shared with Moore a loathing of the tabloids: my enemy's enemy is my friend. And Moore was now a convinced advocate of privacy legislation, which was the point of Spencer's letter.[23] All that could be said about the 'biggest brawl in Fleet Street in living memory',[24] at least for the time being, was said by Kathy Marks in the *Independent*: 'Who could guess *The Mail* could not be outdone in righteous indignation? Who ever thought *The Telegraph* could be so passionate?'[25]

*3*

Grahame Thomson had prepared an agenda for the Code Committee. Paper A read as follows:

*Action Necessary Consequential to the Death of Diana, Princess of Wales*
I understand that Lord Wakeham will report to the Committee on his round of discussions with editors and publishers.
It may be helpful to note the measures introduced or proposed unilaterally by some of the national newspapers –
*Daily Mail, Mail on Sunday, Evening Standard*: No paparazzi pictures to be purchased without, Lord Rothermere's knowledge and consent.
*The Sun*: No intention of carrying photographs which invade the privacy of Princes William and Harry.
*The Independent*: Will never publish pictures of the young Princes William and Harry in private situations again.
*The Express*: No pictures of Princes William and Harry if they are unofficial or paparazzi pictures. Will only publish pictures of the Princes with the approval of their guardians. No paparazzi pictures at all will be published. Freelance photographs will be published only if the supplier can show that they comply with the Code. Definition of private property to be strengthened to include places where people clearly believe they are alone.

*Reports of Lord Wakeham's speech to the London Press Club on 9 September 1997 suggest a number of areas for consideration:*

(1) Extension of the 1995 agreement on Prince William's schooldays to Prince Harry and to continue throughout their education.
(2) Similar provision for all children.
(3) Extending the definition of private property to include areas such as churches and restaurants 'where individuals might reasonably expect a degree of privacy'.
(4) Tightening the requirement for editors to satisfy themselves that photographs from freelances had been obtained in circumstances which did not breach the Code.
(5) Cracking down on publications whose journalists helped form 'the media scrum', playing a part in unjustified 'collective harassment'.
(6) Bringing photographic agencies under the terms of the Code.
(7) Seeking means of bringing paparazzi photographers within the self-regulation culture of the UK press.[26]

'It will be interesting when the Committee meets in London today', wrote Brian MacArthur in *The Times* on 17 September. 'Among the 11 national and regional editors sitting down with Sir David will be Moore. Another will be Bridget Rowe, whose *Sunday Mirror* bought the paparazzi pictures, published three weeks before the princess's death, which first showed the seriousness of her liaison with Dodi Fayed. The same pictures were published the next day in the *Daily Mail* and *The Sun*.'[27] There could also be some nervousness as a consequence of English being quite taken by Alan Rusbridger's idea of adapting the expanded new privacy clause to the wording of Article 8 of the European Convention on Human Rights.[28] Grahame Thomson recalls the occasion as 'cool', chaired very ably by the unfazed English.[29] After helping to ease the tension by disclosing that Canon Oates of St Bride's, Fleet Street, would be offering prayers for their edification, Wakeham, with Black in attendance, made an 'interim report' on his discussions with national newspapers and hoped he would also talk soon to the regionals. Wakeham hoped to catch the mood of the industry as the industry had caught the mood of the public. He defined his own approach: he was an independent chairman of the PCC; the self-regulatory system had made great progress; editing a newspaper required professional judgment; the industry must be responsive to high public expectations; the industry faced very serious threats from implementation of the EC data protection directive and the European Convention on Human Rights.



He said that no one expected Code changes out of this meeting but he would be making his recommendations the following week. His meetings had been encouraging, with evidence of considerable radical thinking. David Newell of the Newspaper Society had been 'helpful'. Wakeham explained his current thinking on (1) Harassment, (2) Privacy, (3) Children, (4) Public Interest, (5) Grief,[30] (6) Sanctions. In his minute reporting a 'prolonged discussion', Thomson's note on 'a new spirit of unity' was undoubtedly the most significant point. This survived Charles Moore's reading a letter from Lord Spencer on privacy and tabling a statement which he felt the Committee should issue. Spencer warned the Committee that if it did not do something adequate about privacy invasion, Parliament would bring in legislation. The new spirit of unity survived the quite intense resistance from the regional editors to Moore's endorsement of Spencer's indiscriminatory indictment of the industry. Moore explained afterwards: 'I wanted to put a bomb under the complacency of the tabloids about their intrusion into the lives of members of the royal family. Earl Spencer and I are both trying in quite separate ways to draw attention to the crisis of confidence in the press caused by the intrusion on privacy.'[31] The Committee eventually agreed to issue the following statement:

> The tragic death of Diana, Princess of Wales, has focused unprecedented public attention on press intrusion, harassment and respect for privacy. As those charged with defining the Code of Practice which sets the benchmarks for the ethical and professional standards of journalism, we recognize this. We are now undertaking an urgent review of the Code. As an industry we emphasize the need for the Code to be followed not just in the letter but in its full spirit. We support Lord Wakeham's calls for wide-ranging and rigorous reforms and recognize that there is a shared determination to rid our publications of practices which we all deplore.[32]

For Wakeham the game was as good as in the bag. Spencer's insolent fax to Moore was probably quite helpful. It certainly heightened consciousness of the 'mood' of the public in editorial minds.[33]

On 26 September Carol Midgley reported for *The Times* Wakeham's plans 'to kill the paparazzi market'. These proposals, drawn up after consultation with editors, were 'expected to be formally approved by the Commission's Code Committee'. Wakeham declared the Code radically overhauled in a statement at a press conference in the Middle Temple. He concluded with 'three important messages':

> To the public. We've listened and we've acted. To editors. You've made a great success of self-regulation over the last six years. Let's keep it that way by rising to this new challenge. And to Government. This new Code will be the toughest set of industry regulations anywhere in Europe. It is doing far more than legislation ever could. You are right to put your trust in effective self-regulation.[34]

'So, within four weeks of her death in Paris', commented Brian MacArthur, 'the late Diana, Princess of Wales has won a posthumous victory that she never would have achieved while she was alive.'[35]

Government responded very much in the old style: welcoming the 'press Code improvements', but expecting the Commission and the newspaper industry 'to take the process of self-regulation further so as to give full protection for people of all walks of life, and not only those who are famous or temporarily in the news'. In particular, the government expected newspapers to have the utmost regard to provisions on paparazzi photography and to respect the privacy of the Princes when in private or on private occasions. It hoped also that photo agencies could be brought within the scope of the Code. Culture secretary Chris Smith intended 'discussing these issues further with Lord Wakeham'.[36]

Given that, there was very little likelihood that the next stages of consultation with the industry and approval by the Code Committee would give rise to serious problems or resistance. And given the publicity for Wakeham's proposals and Guy Black's assiduous lobbying, as the *Press Gazette* pointed out, there was an impression that they were already in place. 'In fact, work has only just started in framing the new Code. New clauses have to be written and editors and the industry consulted.' Yet, astonishingly, at the instigation of Stuart Kuttner, managing editor, the *News of the World* had already asked photo agencies to sign an agreement stating that they would abide by the Code. And there were other, equally astonishing, instances of a new kind of voluntary self-censorship. 'It seems', the *Gazette* wonderingly concluded, 'the spirit of the times and changing attitudes since Princess Diana's death are being followed in advance of the revised Code.'[37]

*4*

This was a line of thinking pushed resolutely by Black and very much encouraged by Wakeham. When presenting the published Code proposals



before his press conference, Wakeham had thrown procedural propriety to the winds. He expected editors to 'endorse them with immediate effect'; to deal with this 'pretty dramatic package of improvements' from 'tomorrow, from day one'.[38] Many tabloid editors, he 'suspected' a few days later, 'would be putting his proposals into effect straight away without waiting for the redrafted Code'.[39]

This was to leave English rather dangling in the breeze. One of the most telling effects of Wakeham's deft herdmanship was the splenetic outburst by Chris Oakley, chief executive of Midland Independent Newspapers and current president of the Newspaper Society, who scorned the manipulability of his colleagues. 'It must be the first time in history', he told a Young Newspaper Executives conference in Durham, 'that the failings of one drunken driver have changed the way a nation's press can operate.' The 'self-abasement of editors' had 'allowed Lord Wakeham to boast that he will soon have the strictest Code of Press Conduct in the developed world'.[40] The NUJ had already denounced the whole business as a 'panic reaction, . . . a sham to placate public opinion'.[41] At the Guild of Newspaper Editors' annual conference at Leeds a good deal of evidence accumulated of journalists who felt their profession had been expertly led by the nose. 'There is a revisionist view of the events following the death of the Princess of Wales', declared the *Press Gazette*, 'which claims the Press Complaints Commission acted too quickly. That major changes were being forced on the industry by the actions of a drunken driver and proposed changes to the Code of Practice were announced as an apparent *fait accompli*.' 'Whose Code is it anyway?' was the conference's indignant keynote. 'Some editors may feel', the *Gazette* suspected, 'that the PCC acted too quickly in a "kneejerk" reaction to events and that Lord Wakeham had too high a profile.'[42]

It was English who had to take the flak at Leeds (Wakeham's contribution being by video), with Guy Black spreading oil on the troubled waters of debates on the contentious new privacy proposals. English did nothing to ease the tension by disclosing his plans that the Commission give its privacy commissioner, Robert Pinker, a far higher profile by authorizing him to launch his own investigations into alleged privacy breaches without need of the trigger of a complaint. Black was alarmed to find that Home Office Data Protection officials had been forbidden to discuss privacy questions. He realized the need for swift and radical action. English had put a brave face on it earlier by suggesting that 'the editors would not automatically approve the changes'; but it was the perhaps slightly cynical reporter who guessed 'they will raise little objection'.[43] In fact, a lot of objections

were raised in Code Committee meetings working on Wakeham's proposals, mainly by Charles Moore. It was not, as Jean Morgan gathered, 'all sweetness and light'. The regional editors in particular regarded Moore's ideas as 'unrealistic'.[44] A fourth and probably a fifth meeting would be needed. English insisted, however, that it was all going 'quite well'. One or two things 'will be slightly different from the way they were presented earlier by John Wakeham, but he never said they were more than suggestions'. He added: 'There's still quite a lot of tweaking to be done.'[45]

'Tweaking', Wakeham could live with; even, for the time being, lynx-eyed reports about certain provisions being 'watered down'.[46] It was the big impression that mattered. He would have approved the *Press Gazette*'s line that the industry, quite rightly, should examine the minutiae of problems that changes in the clauses of the Code might or might not cause. But the press should also look at it in a wider context. 'It needs not only to get behind the spirit of the Code but also to sell it to the public. If the Code is part of a public-relations exercise, there is nothing wrong with that.'[47] Responses from the industry to the full draft of proposed Code changes locally took that point. Charles Wilson's, on behalf of MGN, was a model of clear-headedness.[48]

By 19 November Guy Black could inform the Commission that the industry's Code Committee had completed its proposed changes to the Code of Practice following the death of Diana. The revised draft Code took account of a number of changes proposed by the Commission's Code sub-committee. It was a peremptory document. It had Guy Black's fingerprints all over it. The word 'must' replacing 'should' now appeared no fewer than thirty-eight times. It was by far the most important change in the mechanism of press self-regulation since the original Code of Practice became effective in 1991. There was a kind of poignant appropriateness in the death on 10 November of Lord McGregor of Durris.

It was now up to the Commission to ratify the new Code. A summary of the major changes to the Code read thus:

Preamble: Reworded to make clear that the Code should be honoured in the full spirit as well as the letter.
Clause 1 *Accuracy*: inclusion of inaccurate, misleading or distorted pictures – to take account of picture manipulation. Old Clause 3 (Comment and conjecture) becomes part of Clause 1.
Clause 3 *Privacy*: substantial changes to stipulations on privacy. Definition of private life included. New rules on taking of pictures 'in private places' – expanding significantly the old definition of private property.



Clause 4 *Harassment*: addition of 'persistent pursuit' to deal with paparazzi photographs and motorbike chases.
Clause 5 *Intrusion into grief*: inclusion of publication – although no restriction on the right to report judicial proceedings.
Clause 6 *Children*: new statement on children's time at school; removal of 16 year age limit – with substitution of 'pupils'; ban on payments to minors except where in interests of the child; new subsection on children of famous or infamous parents.
Clause 7 *Children in sex cases*: rewording and simplification.
Clause 13 *Discrimination*: inclusion of mental illness or disability in subsection (ii).
Public Interest: Introduction of over-riding public interest test for children; editors to give full explanation where they invoke the defence[49].

The Commission ratified on 26 November. A press release by the Code Committee disclosed it to the world on December 19. It was to come into effect on 1 January 1998. Sir David English and Lord Wakeham expressed their gratification that the industry had responded so positively to the recommendations put forward in September.

## 5

As Lord Wakeham had reminded the fraught Code Committee meeting on 17 September, the industry faced serious threats from implementation of the EC data protection directive and the European Convention on Human Rights. On 14 October David English conveyed to Guy Black at the Commission Associated Newspapers' 'final lobbying' paper on the question of incorporating the ECHR into UK law. The second reading of the Human Rights Bill was due to get under way in the Lords on 3 November. In common with many other media representations, Associated Newspapers lobbied the Home Office for exemptions under Article 8, guaranteeing a right to privacy: 'specific restrictions within the enabling statute to effect its intentions to ensure that Article 8 protects individuals from interference with their rights of privacy by public authorities only'. Such restrictions should ensure, Associated urged, that the courts would not regard themselves as obliged by Article 8 to determine and proscribe on privacy generally, and in any event that infringement of Article 8 should not give rise to compensation or restrictive injunctions.[50]

These were terms of engagement as formally defined within the industry. At the Guild of Editors' conference in Leeds, Les Hinton, executive chairman of News International, demanded that the government 'come clean' and say 'straight up, "we do not see the ECHR as privacy legislation by the back door"'.[51] Tom Crone, legal manager of News Group Newspapers, alleged that judges were 'itching to find a reason to introduce a law of privacy, and ECHR incorporation might well be their opportunity'. 'It won't be the Bill itself which will hit us over the head, but how the judges are likely to pick up this particular ball and run with it.'[52]

This was precisely the point urged by advocates within the press of a privacy law negotiated by the industry: to get in ahead of the wigocrats. Rusbridger saw himself as 'so far a lonely voice pointing out from the wilderness that most editors remain in "blissful ignorance" that we are effectively on the verge of having a privacy law anyway' under Article 8 of the ECHR and the 1997 Harassment Act. 'By the time a few irritable and illiberal judges have begun to play around with piecemeal bits of legislation, it seems quite probable that the very journalists currently inveighing against a privacy law will be begging for one.'[53] An aspect of this argument was put by Adam Raphael: press restraint following Diana's death would not last; commercial pressures once more would lead to breaches of the new Code.[54]

Opinion in the industry by and large doubted any advantage in a negotiated privacy deal. Martin Cruddace, head of the editorial legal department at the *Mirror*, thought Rusbridger naive. 'Once Parliament gets its teeth into a privacy bill you can be assured the result will be a radical and extreme law of privacy, which will be defined to protect MPs and others who are democratically accountable to the electorate.'[55] And what chance would any Bill have, in any case, against the human rights juggernaut now about to get under way in Parliament? The thing to do was not to try to get in ahead of ECHR incorporation, but to fight to ensure that the juggernaut would not crush press and media interests. The industry after all had an insurance policy which had just proved its efficacy – even if perhaps at 'too high a profile' for the comfort of some journalists. In the course of repudiating yet another of Geoffrey Robertson's attacks on the PCC as an 'enormous confidence trick', Cruddace asserted: 'the PCC has slowly and surely developed a status among newspapers I thought not possible four or five years ago'.[56]

On 2 November in the *Mail on Sunday*, the accredited organ of middle England's heartland, Wakeham took up a high-profile stance once more.



The proposed Human Rights Bill, he declared, could threaten freedom of the press and lead to a privacy law 'by the back door'. 'While a privacy law might be established to protect those in the public eye with nothing to hide, it would be used mercilessly by those who had everything to hide. It would be a villains' charter.'[57]