

Full Fact Response to the 12 Key Questions on Module 1

In this document references such as FT1 refer to examples from our 89 page submission of examples of our factchecking and correction request experiences.

The following questions are answered below: 1 (newsroom culture); 3 (competition); 7 (why regulation not general law); 8 (Editors' Code); 11 (public interest). 10 (role of a free press) will be answered in a later submission.

Culture, practices and ethics:

1 The Inquiry needs to understand how newsrooms operate, particularly in the tabloid and mid-market sectors. Can you provide a personal account of culture, practices and ethics in any part of the press and media?

Full Fact has provided examples of culture and practices relating to accuracy in a separate document.

3 Some seminar attendees suggest reader loyalty limits competition between titles. Professional competition to be first or best with a story, though, could be a powerful force. Other participants suggested some papers put journalists under significant pressure to produce a story within a tight timeframe. The Inquiry would be interested in experiences of the competitive dynamics in journalism and how that impacts on the way in which journalists operate, with examples where possible.

We look forward to reading the evidence you receive to try to better understand why we run across the inaccuracies we do. We do not see how all of the examples we have provided can be adequately explained by competitive pressures and time constraints. However, we can offer one prominent example of competitive pressure leading directly to inaccuracy.

The verdicts in the Meredith Kercher murder trial were keenly-awaited and likely to attract significant web traffic for the papers that covered them first.

Amanda Knox was found not guilty of murder. Before that was announced, though, a verdict of guilty was given in relation to a charge of slander. As soon as the first guilty was pronounced, the Daily Mail published an online article headlined: "Guilty: Amanda Knox looks stunned as appeal against murder conviction is rejected." The first part was mistaken; the second part was fiction.

The fiction continued in the text, including: "As Knox realized the enormity of what judge Hellman was saying she sank into her chair sobbing uncontrollably while her family and friends hugged each other in tears" and "Prosecutors were delighted with the verdict and said that 'justice has been done' although they said on a 'human factor it was sad two young people would be spending years in jail'."

The source of these quotes, and screenshots of the relevant articles are available here: <http://www.malcolmcoles.co.uk/blog/daily-mail-guuilt/>. According to him, the Sun, Guardian and Sky News also ran stories claiming Knox was found guilty of murder but there is little detail available of those so it is not clear if other outlets indulged in the same fictionalisation.

This example is interesting for several reasons:

- It shows competitive pressures leading to pre-written content containing fiction which it would be almost impossible for a reader to become aware of if not revealed by mistake. It is a clear violation of readers' trust.
- It seems to demonstrate how the competitive dynamics are being affected by new technology: reader loyalty is probably lower online, leading to an even greater emphasis on speed.
- It shows a complete indifference to the accuracy of that content: not only was its main point wrong by mistake, but the details and colour were—could only have been—completely and wilfully made up. It would have been possible for the pre-written article to limit itself to a skeleton based on what was known in advance, and be added to when the reaction was actually known. The paper *chose* not to do that.
- The fiction was in clear contempt of the inactive duty in Clause 1 of the Code, to 'take care not to publish' inaccurate information. Despite being widely publicised, the PCC took no action.

Standards

7 Attendees proposed that the general law, as it applies to everyone, should be the only constraint on the press. The inquiry would welcome submissions on whether, and if so why, the press should be subject to any additional constraints in relation to behaviour and standards, for example relating to accuracy, treatment of vulnerable individuals, intrusion, financial reporting or reporting on crime, other than those imposed by existing laws.

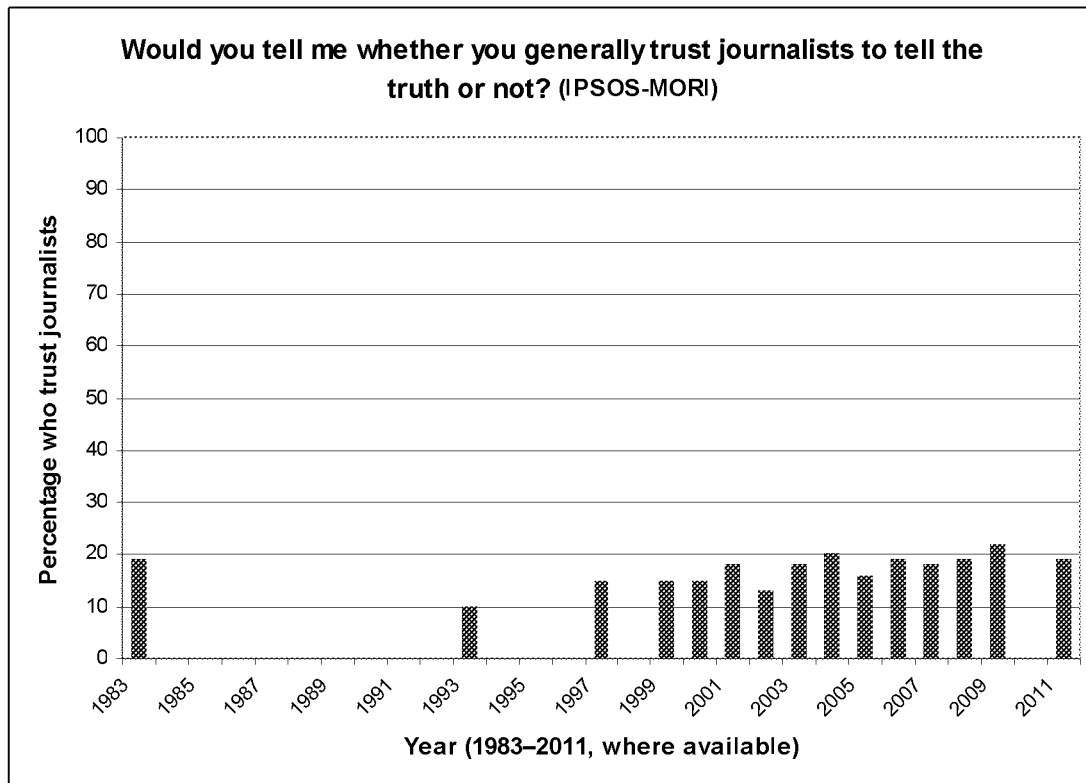
Why Not? • Further Reasons • The Harm Principle • The 'general law' Approach • Accuracy in Current Law

(We think it worth nothing that this question is fascinating because it specifically asks about 'additional constraints'. To subject the press to the same general law as the rest of us would be more a question of eliminating a whole set of privileges, from VAT exemptions, to special access, to libel defences.)

Why Not?

If the press does not determinedly constrain itself to high standards, especially of accuracy, its journalism is not the important enterprise it is made out to be and arguments about the special role of the press in a democracy fall aside.

The problem, as our examples illustrate, is that journalists and newspapers do not consistently hold themselves even to basic standards. That conclusion, upon which the public has been settled for years, might help explain why there has been a major inquiry into the press every thirteen years since 1947.^{1,2}



The press’s power to do great good as an informant of its readers and a watchdog over the powerful implies a power to do great harm when it is mistaken, or careless, or reckless with the facts. Unfortunately, one reason why the press must be subjected to some constraints in addition to the general law is because, as our experience has shown, not all journalists and newspapers can be trusted to impose those constraints on themselves.

Further Reasons

Here are three more reasons:

1. Without regulation, it is not the case that journalists will be working in an

¹ Royal Commissions in 1947, 1961, and 1974, the Calcutt Inquiry in 1991 and the Leveson Inquiry.

² Graph data with thanks from <http://www.ipsos-mori.com/researchpublications/researcharchive/poll.aspx?oItemId=15&view=wide>

unfettered way to produce the best possible journalism. Rather, they will be subject to the unfettered power of their editors and proprietors. Those people have interests and responsibilities going far beyond the service element of journalism. The constraints on journalists in a regulated system are not necessarily greater than those in a firmly-managed newspaper, just transparent and a shared responsibility.

2. A regulatory system has the potential to provide swifter and cheaper access to justice than the general law, to the great benefit of both newspaper and complainant. (Please see our answer to question 8, below).
3. No general law exists to enforce journalistic accuracy beyond cases of individual libel, and the law of privacy is still developing. This has two effects:
 - a. People would be unable to secure even a correction in cases where it seems clearly right that they should. For example, many of the 1.8 million disability benefits claimants whom The Sun inaccurately headlined 'Fit as a Fiddler' in SU2.
 - b. It would leave decision-making over a set of value judgments that help shape the society we live in primarily in the hands of private companies. For example, the boundary between domestic and public life, how we treat suicides and other things that even the existing Code at least makes part of a wider and more accountable discussion.

The Harm Principle

Most importantly, constraints on the press are justified by the classic test, the harm principle. Newspapers' right to publish whatever they like in pursuit of their commercial freedom should rightly be unconstrained as far as it does no harm to anyone else. However, insofar as it does harm others, it needs to be justified.

Inaccurate, misleading or distorted reporting harms others in three ways:

1. Potentially provoking ill-informed decisions from politicians or voters [SU1].
2. Vilifying groups of people who do not deserve to be vilified (members of which, even if personally affected, may have a hard time proving identification for the purpose of a libel action). [DM9, EXP16, SU2, DT4]
3. Switching people off politics. We know that fewer than two in ten people trust journalists to tell the truth. We also know that lack of information and knowledge about politics and current affairs is regarded as one of the most persuasive explanations for current levels of political disengagement.³ It is hard not to connect the two. If it is too hard to find information you feel you can trust, how can you get meaningfully involved?

To summarise this far, the case for the press to be subject to additional constraints is, we submit, obvious. The fact that this needs to be enforced by society rather than the press itself is a conclusion that has been forced by press behaviour onto the

³ See, for example, the compilation of evidence and academic research in the report of the Power Inquiry, pp87-93.

public. It is not that all or most press behaviour is bad: it is that *enough* of it is bad, and the industry's reaction so *torpid*, that it cannot be left to itself again.

The 'general law' Approach

We think it worth briefly explaining why we think the proposition, that the press should be subject only to the general law, is (superficially) attractive, and then what is wrong with the proposition.

The underlying idea was persuasively expressed in Justice Brandeis's opinion in *Whitney v California*:

“If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

Rather than constrain the media by prior restraint, the argument goes, why not allow the so-called 'marketplace of ideas' to do its work? As Milton asked: “who ever knew Truth put to the worse, in a free and open encounter?”

Of course, the answer is all of us, regularly. It is striking that that the most widely read newspapers publish the work of the least trusted journalists.⁴

FactCheck.org, a US factchecking organisation, had this to say after the 2008 Presidential election:

“We saw more aggressive factchecking by journalists in this election than ever before. Unfortunately millions of voters were bamboozled anyway:

- More than half of US adults (52 per cent) said the claim that Sen. Barack Obama's tax plan would raise taxes on most small businesses is truthful, when in fact only a small percentage would see any increase.
- More than two in five (42.3 per cent) found truth in the claim that Sen. John McCain planned to 'cut more than 800 billion dollars in Medicare payments and cut benefits,' even though McCain made clear he had no intent to cut benefits.”

They said they were not surprised by this. It was like that in 2004 too. “Voters,” they concluded, “once deceived, tend to stay that way despite all the evidence.”⁵

Whilst we do not know of any research on the question, we would not be surprised if similarly inaccurate claims were widely believed after the recent AV referendum. Informed public debate depends on self-restraint from powerful people. Unless that can be relied upon, some form of regulation becomes necessary.

⁴ Commission for Standards in Public Life, *Survey of public attitudes towards conduct in public life 2010*, p.17. Trust in professions to tell the truth: tabloid journalists 16%; broadsheet journalists 41%.

⁵ http://www.factcheck.org/specialreports/our_disinformed_electorate.html

Accuracy in Current Law

The privileges of the press have always been contingent on its commitment to accuracy.

Mr John Hutchinson MP, moving what became the Newspaper Libel and Registration Act 1881 protecting proprietors from libel actions, explained that then:

“A newspaper was the record and expression of what took place in public, of all political life, and of all municipal and social activity—in short, it was the record of everything outside the domain of strictly domestic intercourse; and he asked whether it was fair that an agency which met an ever-increasing demand of this kind, *and which was expected to perform its functions with accuracy*, should have to do its work in the midst of red-hot ploughshares, and should be subject to consequences for the injudicious language of persons whom it correctly reported. Protection from private liability in the discharge of an important public function was the end sought to be obtained by this Bill.”⁶

More recently section 58(2A) of the Enterprise Act 2002, as amended by section 375 of the Communications Act 2003, specifies: “The need for

- (a) accurate presentation of news; and
- (b) free expression of opinion;

in newspapers” as a public interest consideration in relation to merger activity, distinct from mere plurality. The law currently upholds a requirement for accuracy because it is necessary to do so to keep the marketplace of ideas functioning.

Accuracy has always, rightly, been expected of the press. It must continue to be. That unfortunately means systems are needed to constrain decision makers in the press who would and do act irresponsibly without them.

8 Editors at the seminars argued that the Editors’ Code was a good set of standards to work to. The Inquiry would be interested in submissions from all parties on the coverage and substance of the Editors’ code including accuracy and redress for those who are affected by breaches of the code.

The Need for Stronger Expectations on behalf of the Audience • How Clause 1 (‘Accuracy’) Works in Practice • The Good Points • The Missing Points • The Bad Points • The Burden on Complaints • Third Party Rule • Headlines

⁶ HC Deb 11 May 1881 at c.218

http://hansard.millbanksystems.com/commons/1881/may/11/newspapers-law-of-libel-bill#S3V0261P0_18810511_HOC_21

The Need for Stronger Expectations on behalf of the Audience

The New York Times Company's Policy on Ethics in Journalism states the following:

"A1. Our Duty to Our Audience

"17. As journalists we treat our readers, viewers, listeners and online users as fairly and openly as possible. Whatever the medium, we tell our audiences the complete, unvarnished truth as best we can learn it. We correct our errors explicitly as soon as we become aware of them. We do not wait for someone to request a correction. We publish corrections in a prominent and consistent location or broadcast time slot."

This is a far cry from the tone of the Editors' Code of Practice.

Similarly, the National Union of Journalists' Code of Conduct defines a journalist as someone who: "Strives to ensure that information disseminated is honestly conveyed, accurate and fair."

The preamble to the Editors' Code of Practice refers to "the public's right to know" but in practice this seems only to amount to the press claiming the privilege of publishing what they want to, not to a duty they believe is owed to their audience.

Many great journalists define journalism as an attempt to provide 'the best available version of the truth' to an audience. We believe the Code should require that positive standard, not merely the negative one of avoiding inaccuracy. That would fit the important role claimed for the press in our democracy.

This shift in emphasis would, among other things, end a persistent practice of running stories that are inaccurate with a final or very late paragraph which effectively invalidates the story. As Ben Goldacre has noted, these paragraphs "permit a defence against criticism, through the strictest, most rigorous analysis of a piece. But if your interest is informing a reader, they are plainly misleading."⁷

How Clause 1 ('Accuracy') Works in Practice

Full Fact's work has only concerned clause 1 ('Accuracy') so far. Unlike almost all other witnesses we believe the Code is seriously flawed. This is not really a disagreement. We see the Code from the point of view of (a) whether it succeeds in maintaining standards, which it doesn't, and (b) how enforceable it is. Others look at it as a statement of standards to work to. We accept that, if worked to in good faith, the Code might be adequate from that perspective. However, regulatory codes exist at least as much for the people who will not work to them in good faith as for the rest.

⁷ Ben Goldacre *The caveat in paragraph number 19* via <http://www.badscience.net/2010/10/the-caveat-in-paragraph-number-19/>

We should note that there is some evidence to suggest that Full Fact's experience of the PCC system is more positive than is typical, due to our familiarity with them and their familiarity with us.

Clause 1 covers the right ground but does so in a way that is ineffective and impractical when it comes to actually seeking a correction or making a complaint.

Clause 1 currently reads:

1 Accuracy

i) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.

ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published. In cases involving the Commission, prominence should be agreed with the PCC in advance.

iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.

iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

The Good Points

Paragraph iii makes an extremely important distinction well and must remain in any future version. (Incidentally, paragraph iii points to the answer to the 'absolute truth' doubts: many important things *are* verifiable or falsifiable facts; most things are not).

We assume paragraph iv is uncontroversial, but it is not something about which we have any expertise and so we do not address this further.

The Missing Points

The following omissions from the Code are vital in practice and are probably partly responsible for the fact that resolving complaints can take so long and be so unpredictable:

- No standard of proof
- No stipulation about who bears the burden of proof
- No sanctions

In the absence of a defined *standard of proof* for resolving complaints under the Code, the one that often seems to be applied is that, if a newspaper can find some conceivably defensible sense in which a claim is true then it will be prepared to argue that the claim is true enough to publish. We think this is wrong because it neglects what we consider to be the basic journalistic ethic of responsibility to one's audience: the obligation to present the best available version of the truth.

An example of a response to serious inaccuracies which we felt used a spurious argument to give an impression of accuracy was the Daily Telegraph's lawyer's first response in DT4. The government has assessed a group of disability benefits claimants as 'Fit to Work' (30 per cent), ready for the 'Work Related Activity Group' (39 per cent) or eligible for benefits permanently (31 per cent). Papers lumped the first two groups together and proclaimed that 2/3 or seven out of ten of these people were fit to work. We pointed out this was wrong and eventually obtained corrections.

Rather than accept the point, the Telegraph at first argued that people assessed as being ready for 'Work Related Activity Group' as opposed to 'Fit to Work' were "mandated to engage with... a national back-to-work programme" so they must be fit to work despite not having been assessed as such. We pointed out that the people in question would include people who were in-patients in hospital. Within a month of that letter the Daily Telegraph had agreed to print a correction. We surmise that they did not feel it was a strong argument either.

In future the PCC should evaluate the accuracy of stories in terms of whether they presented the best information the paper had available (or perhaps, could have been expected to have available) not merely in terms of whether there is some conceivable way in which it could be justified [e.g. ES1].

Full Fact believes that the *burden of proof* should be on the paper once a complainant has proven a prima facie case that the Code has been breached. In other words, wherever there is real doubt, it should explicitly be for the newspaper to justify to its regulator that it has complied with the standards to which it is meant to comply. As we argue below, we also believe that once a complainant has shown a prima facie case it should be for the paper or regulator to make sure the concern is resolved, whether or not the initial complainant is willing to keep putting in considerable amounts of time to pursue the complaint.

For example, when the Mirror wrongly reported that life expectancy was lower in a Welsh estate than Haiti or Iraq [MR6], and we pointed this out, they offered a correction but only if we obtained "a direct confirmation from the Health Board" concerned for them—notwithstanding that we had provided the Office for National Statistics figures showing the story to be wrong, which was sufficient to convince The Sun [SU12] and the Daily Telegraph [DT1] to print corrections. It must be right, and should be explicit, that it was for the Mirror to do its own research at that point and either refute our correction or print it.

The Editors' Codebook (the commentary on the Code) does say on page 19: "The burden of proof, as always in the PCC system, falls on the editors. If they wish to claim the story was true, then they will need to demonstrate that there were no significant inaccuracies or distortions and that it was not misleading." This is not, as we have shown, how it works in practice but given that the principle has been accepted there should be no resistance to making it explicit in the Code itself and putting it into operation.

In any case, the codebook largely seems to discuss an idealised PCC quite different from the one we work with in practice. For example, this: "while delays in some cases may be genuinely unavoidable, the Commission takes a stern view of unnecessary delays in righting undisputed — or incontestable — errors."

We will address sanctions in module 4 of Part 1 of the Inquiry, when the industry's proposals for what should succeed the PCC have been made public.

The Bad Points

Paragraphs i and ii are vague in almost every important respect. This makes it very hard for Editors, and complainants, to understand what the rule on accuracy actually means, and to know when or if the PCC will back them up. Predictability is at the heart of an effective regulatory system. It promotes compliance in the first place and allows for an efficient complaints process.

The vagueness, along with the omissions mentioned above, also appears to make things hard for the PCC itself, an impression we have gained both from our discussions and from inconsistencies in its adjudications and handling of papers.

The following concepts in Clause 1 (i)-(ii) are all harmfully vague:

- The duty to *take care*: although this is phrased as a duty relating to the process of journalism, in practice it does not seem to be treated as a standalone duty. At most it seems to be something that may be a mitigating or aggravating factor when it comes to the comments the Commission may make in the small minority of cases that reach adjudication, or perhaps to the prominence it may feel is necessary for a correction. This reflects the fact that there are no sanctions available anyway.
- What is a *significant inaccuracy*, and what makes it significant? Is it the importance of the claim, the prominence, who is making it, how integral it is to some wider point an article or campaign may be making? Doubts about this were why we withdrew our PCC correction requests in respect of Chris Atkins' churnalism stunts, as recorded in a separate submission. This is rarely problematic, but, importantly, clarifying what makes an inaccuracy significant might help clarify what makes a correction duly prominent. Intuitively, we think the two concepts should be connected.

- What makes something *distorted* or *misleading*?
- What counts as *corrected*? The PCC is willing to allow agreed inaccuracies to be resolved with a letter from the complainant published in the newspaper but no acceptance of inaccuracy from the paper. [DM8]
- What constitutes correcting something *promptly*? In good cases, corrections are turned around in days [FT2] but we have also seen papers take months even after they acknowledge the inaccuracy [SU12], without the PCC forcing the issue. Speed is always important but during elections and referendums corrections will be essential within days not weeks.
- What constitutes *due prominence*? As we explained in the introduction to our examples submission, the key question is what corrections are for. We believe they should aim as far as practicable to undo the harm caused. If the PCC was signed up to a New York Times / NUJ definition of journalism, they would think so too. Corrections should not, as they seem to be now, merely be setting the record obscurely straight. Neither do we believe that being required to print a correction should be seen as a rebuke. The need to correct a mistake does not necessarily imply anyone has done anything wrong. The priority should be to make sure that the audience is well-informed.
- Under what circumstances is an *apology* appropriate (and is it to someone misrepresented, or is it an apology to readers for lapsing from the Code). We think it should be the latter in some cases but have concluded it is not. Following two of our complaints the PCC rebuked a newspaper for ‘sloppy journalism’ on two front pages but required no apologies. [DM3, DM17]

In other words, we have noticed that just about *every significant concept in clause 1* has no clear meaning. That latitude is in our experience almost always exploited on the side of giving papers free rein, sometimes to the detriment of their audience.

Furthermore, as far as we have seen, the following aspects of clause 1 have little or no practical effect or enforceability: the duty to take care; the edict against publishing distorted or misleading claims; the duty to correct promptly and the duty to apologise (if it is a duty owed to the audience rather than complainants). Of course, with a purely reactive and complaint-driven system it can be hard to see what the full remit may be.

The rules about accuracy in the present Code amount to little more in practice than a duty to publish a correction eventually *if* someone else persistently points out an inaccuracy *and* substantiates it beyond refutation, *not just* to the paper itself but to the PCC as well. Much of this is the fault of vagueness in the Code enabling a weak approach from the PCC. This ‘print now, correct much later’ regime does little to drive up standards (although of course that is not what the PCC is tasked with).

Looking to the future, if the vagueness of the current clause 1 is to be paired with a multi-tier complaint system involving readers’ editors, PCC staff and an appellate Commission, as has been mooted by the PCC already, then there is no chance it will work because it will be impossible for the different tiers to apply this Code consistently, let alone for Editors and complainants to predict outcomes.

The Burden on Complainants

Our view is that when serious, credible concerns are raised about an article the responsibility should fall on the regulator to investigate and either be assured that there is no problem, require appropriate remedial action, or, if necessary, impose sanctions.

As our Director described when addressing the Inquiry's seminars, the present reality is a system in which "the user experience [of the PCC] is controlled by the newspapers but the complainant has to provide all the energy." It takes a lot of energy, too. Ultimately that serves the public badly. Once again, this reflects the fact that the PCC's ultimate goal is to resolve complaints rather than uphold standards.

The other side of this is that as mistakes are inevitable in journalism corrections should be the badge of a trustworthy newspaper. Indeed, the standard is set in this area by those newspapers and journalists who are genuinely keen to correct errors in the service of their audience and are proud of doing so. There is no reason that should not become the prevailing press culture.

Third Party Rule

The Third Party Rule is a policy of the PCC, which is summarised at http://www.pcc.org.uk/faqs.html#faq4_7.

Evidence so far does not seem to have done justice to the third party rule as we have experienced it, or seen it applied to others. It is less restrictive in principle than many realise, but more restrictive than the PCC tends to admit. Its vague and uncodified nature gives the PCC considerable discretion, which it sometimes seems to use to avoid awkward cases.

Our impression of how the third party rule works in practice is this:

For privacy/harassment/intrusion complaints, the person affected must complain themselves (and the PCC will actively contact people to offer their service).

Discrimination complaints work similarly: you must be the person referred to, in the group referred to, or represent the group referred to. We are not aware of the PCC actively contacting representative groups to ask if they wish to pursue discrimination complaints, though we would not necessarily be.

In relation to accuracy complaints:

Points of 'general accuracy' can be complained about by anyone. A point of general accuracy seems to be one whose importance is to society generally instead of or as well as to a particular individual or group.

However, if the point concerns a named body or person (e.g. if you complained about press coverage of a particular organisation's report) the PCC will usually do two things:

1. Ask you what your standing in relation to the issue is, and whether you have been in contact with the relevant body.
2. Approach that body and ask if it wishes to complain.

Having done those, if the body does not wish to complain, the PCC will consider whether it will use its discretion to investigate. This whole process, of course, is a result of the fact that the PCC is a complaints resolution body, not a body charged with upholding the press's obligations to its audiences.

This, for example, was the response we got to our first complaint, which concerned how papers had reported an Ofsted review of special educational needs:

"As our information makes clear, it is rarely the case that the Commission decides to waive its third party rules and take up a complaint in the absence of contact from the individual/organisation directly involved. However, we approach these matters on a case by case basis.

"The Commission does take up complaints in relation to matters of general fact, in regard to Clause 1 (Accuracy) of the Code. In this particular instance, the question for the Commission will be whether this is a point of general fact, or whether it would require the involvement of Ofsted, whose interests are clearly directly associated with the issue.

"Before we can look to move forward, are you able to confirm whether you have been in contact with Ofsted on the issue directly? If not, would you welcome us contacting Ofsted about the concerns you have raised?"

The third party rule causes very long delays. On 25 Sep 2011 the Mail on Sunday reported that the BBC was replacing BC and AD with BCE and CE [MOS2], an inaccurate front page splash ('BBC TURNS ITS BACK ON YEAR OF OUR LORD') which the BBC was quoted refuting even in the article itself.

Nevertheless, it took until 24 Oct for the Commission to get a response from the BBC deciding that it did not want to complain. This is not surprising: public bodies never want to pick fights with people who buy ink by the barrel. Although we can see the frustrating logic of this procedure for a complaints service, for a regulator it would not be appropriate to have such a delay when no private interests are involved.

Finally, correspondence around complaints and even adjudications often seem to suggest that because the relevant body has not complained about an inaccuracy it

should be treated as less serious than if they had. This should be scotched. Once again it fails to give priority to the audience's interests.

Headlines

Headlines are difficult for many reasons including space, complexity and being written by sub-editors rather than the journalist who wrote the piece. They often avoidably distort by over-simplifying, and sometimes actually contradict, the piece they head. The PCC's studiously naive approach, which misses this point entirely, is to say that the headlines must be read with the piece in its entirety to assess accuracy.

We say the Code needs to say something more intelligent about accuracy in headlines. Once again, regulation that starts from the position that the task in hand is to provide the audience with the best available version of the truth, as we have suggested, would end in better outcomes.

To demonstrate the point, we've pursued complaints against several papers with regard to headlines about the proportion of 'new jobs' going to foreign workers, most recently against the Daily Mail. As the Office for National Statistics explicitly states in its guidance on these figures: "The estimates relate to the number of people in employment rather than the number of jobs. These statistics have sometimes been incorrectly interpreted as indicating the proportion of new jobs that are taken by foreign migrants." This is important as when foreign-born employment rises but overall employment falls, it could be said by this logic that foreign workers took more than 100 per cent of 'new jobs'.

Despite this being clearly misleading, the Mail argued that "there has never been any question over the accuracy of the article. The complaint revolves rather around the headline that accompanies it." On this basis, they claimed there had been no breach of the code, and in the strictest terms they were correct. However it was clear to both the paper and the PCC that this was an unsatisfactory resolution, and to the paper's credit they agreed to amend the headline to one that we had proposed with the assistance of the ONS.

This demonstrates two things. First, there is an implicit recognition that the headline is important in its own right regardless of the accuracy of the article as a whole, but complaints relating to headlines require the co-operation of the paper involved to be satisfactorily resolved. Second, it is possible for the PCC or any future regulator to negotiate accurate headlines that satisfy the editorial and spatial constraints that must necessarily apply in this area.

Getting headlines right is often difficult, though, which is why we believe it would be helpful to have a specific section of the Code addressing them specifically.

11 We've heard arguments that sometimes it will be in the public interest for journalists and media organisations to do things that would otherwise be ethically or legally questionable. The inquiry would be interested in submissions on the extent to which, if at all, should acting in the public interest be a complete or partial defence in relation to unlawful or unethical activity in pursuit of journalism; and, if so, subject to what conditions.

Clause 1 of the existing Code, which covers accuracy, is not subject to any public interest exception. This must be right. To quote Mr Jay: "Logically, there cannot be any public interest in publishing facts which are inaccurate."

Recklessly or wilfully publishing inaccurate information is unethical. Unfortunately, the examples in our evidence suggest it is nevertheless widely accepted in at least some newspaper cultures. We submit that such behaviour is always, and under all circumstances, directly contrary to the public interest.

The first component of any public interest test must be not merely that the material published is not inaccurate but that, in the words of the NUJ Code of Conduct, it "strives to ensure that information disseminated is honestly conveyed, accurate and fair."