

Submission to

The Press Complaints Commission

by

MediaWise

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Introduction

MediaWise (formerly PressWise) is an independent media ethics charity, set up in 1993 by 'victims of media abuse', supported by concerned journalists, media lawyers and politicians in the UK. We believe that press freedom is a responsibility exercised by journalists on behalf of the public. Our primary purpose is to provide advice, information, research and training on all aspects of media policy, practice and law.

This document presents MediaWise's recommendations for reforming the system of press regulation, ahead of Mike Jempson's meeting with members of the PCC. The first section deals with improvements to the self-regulation system; the second focuses on changes to the Code.

1. IMPROVING SELF-REGULATION

1.1 Keep it simple with a corrections column

French academic Prof. Claude-Jean Bertrand¹ has identified many different formal and informal systems of media accountability – from the logging system operated by most broadcasters in the UK, which ensures that both bouquets and brickbats from the public are passed on to editors and producers, to the letters columns of the newspapers where readers can let off steam. Media monitoring by academics and special interests groups can also highlight evidence or suspicions of bias.

However, one of the most effective accountability systems for the press is also the simplest – a regular corrections column of the sort pioneered by *The Guardian*, guaranteed space and supervised independently of the editor. Its virtue lies in the very fact of its existence – readers know that the publication is willing to admit to mistakes. If the column is easily accessible and appears each day, readers can refer to it at a glance just to check that they have not been misled by anything they have read in the publication recently.

Contrary to expectations that such a column in *The Guardian* might have to concentrate on correcting typographical errors, it has proved to be a popular addition to the paper's content. The thoughtful weekly commentary by Readers' Editor Ian Mayes has become required reading, providing a discreet form of media literacy by engaging with readers intelligently and offering an invaluable insight into the process of selection and debate within the newsroom.

It would be heartening to hear Sir Christopher suggesting that all editors should adopt this relatively painless practice. He could argue that it would be a cost-effective investment, building public confidence and trust in the publication and saving a great deal of time, effort, and money all round.

1.2 The Right of Reply

Many perfectly healthy democracies have more stringent regulatory systems, or even a statutory right of reply, like France, Germany, Belgium, Norway, Sweden, Greece, Austria and Switzerland. The Council of Europe recommended a right of reply as far back as 1974, and even now the Directorate General of Human Rights is devising a Draft Recommendation on the right of reply for online media.

It may not be on the cards in the UK, but there is no reason why the PCC should not recommend that newspapers offer a more generous right of reply to genuinely aggrieved parties. A right of reply is, after all, what most complainants want – to be allowed to present their side of the story or their point of view, unmediated, after the public has been presented with an inaccurate version of events.

An automatic right of reply is not a recipe for removing control from the editor; it is a very practical way of demonstrating a commitment to accuracy. Those who argue that newspapers would then be full of corrections ignore the fact that if that were to be the case it would only be as a result of them having first been unfair or full of errors.

¹ Claude-Jean Bertrand, *Media Ethics and Accountability Systems*, New Brunswick (NJ) & London, Transaction, 2000 - 164 pages - ISBN 1-56000-420-7.

One attractive alternative that MediaWise is considering at the suggestion of a variety of aggrieved parties, is to launch a website onto which complainants can post their objections to erroneous stories. Other print and broadcast journalists will then have direct access to an alternative version of events. That might reduce the shelf-life of dodgy stories that pepper the press and trouble the PCC, and prevent their repetition just because they have already appeared in print. It would be a useful extension to the debate about what constitutes freedom of speech.

1.3 A hotline via the regulator

Freedom of the press is undermined if any person is given the right to censor material in advance of its publication, and MediaWise shares the concern of all media professionals that any form of prior restraint can be open to an abuse of power.

However, there should be a means of advising editors of the risks and potential consequences of publishing problematic stories – for instance, where children might be adversely affected by material revealed at inquest hearings or even court cases. If self-regulation is to be transparent and equitable, there needs to be a single system, open to all, when there is a serious risk of unnecessary suffering or harm being done to innocent people by the printing or broadcasting of words or images.

The PCC's early warning system should not bind editors in any way. They must be free to make their own judgements and determine whether in their view an overriding public interest justifies publication. However, if an item is published and it proves to be inaccurate or causes unwarranted distress or harm to innocent parties, the fact that advance notice was given should be taken into account when adjudicating upon the subsequent complaint.

1.4 Timing and deadlines

Sir Christopher should encourage his staff to be more relaxed about the issue of time. At present complaints are supposed to be made within one month of publication or the editor's latest reply to a complainant. This is not an unreasonable time limit, but no explanation is offered for this arbitrary time frame. In the more ephemeral broadcast media the time limit is far longer, and programme tapes must be kept for three months.

There are occasions when members of the public are only made aware of a problematic story some time after it has been published, especially if it is not in a publication they read regularly. They may have been on holiday, or dealing with more pressing family, legal or work problems which might be related to the issue at stake. Some simply have no idea who to turn to for advice, and waste time and money trying to find out if they have a legal remedy. Others may only discover through the internet that they have been singled out for mention in the media.

It can be difficult to assemble a case in a relatively short space of time, especially if the offending article is the result of an investigation by the newspaper and the protagonists are contacted only at the last minute to respond to allegations, the details of which they will not see until the following day.

It should not be forgotten that most complainants have to compile their case in their spare time and few have the necessary skills and resources to produce effective challenges. Some must spend days, weeks or months, sometimes at considerable personal cost, trying to put the record straight. They are expected to deliver copies of the offending articles, meet tight deadlines, and produce watertight cases backed by documentary evidence if they want to be taken seriously. Publications meanwhile can call upon the 'protection of sources' excuse to refuse to reveal how they obtained the disputed information, and in our experience have little to fear from the PCC if they miss deadlines, whereas complainants are warned that if they don't meet them their complaint may fall.

Sometimes the PCC has complained that photocopies of articles sent by complainants are unreadable, and its website states that it cannot keep all newspapers and that editions vary in their content. However, the PCC does have a relationship with the industry that makes it perfectly possible to require the publisher to supply copies when complaints are made; the broadcast

regulators are able to do that, and it would be a service that would keep the PCC in closer touch with editors, as well as forewarning them that their output is under scrutiny.

1.5 Third-party complaints

The PCC should be more flexible about which third-party complaints it entertains. Refusals should be accompanied by a clear and precise explanation. For example, any refugee, black person, homosexual or lesbian, might reasonably object if a newspaper published inaccurate or prejudicial material about refugees, black people, homosexuals or lesbians, even if they themselves are not mentioned by name. After all, they are the ones most likely to bear the brunt of any public displeasure that ensues. To argue that this is unlikely to happen flies in the face of reason, since there have been innumerable instances of outbursts of public rage against paedophiles (during the 'name and shame' campaign), and against 'travellers', asylum seekers, and indeed anyone thought by bigots to 'look foreign', when the press run scare stories dominated by inflated figures or announcing the possible siting of a hostel in a locality.

Nor is it unreasonable for readers who are not members of the group under attack to complain if they feel that inaccurate or prejudicial material is likely to distort perceptions, cause harm to others, or skew the responses of policy-makers. We are all equal members of an open democracy, so public misperceptions generated by inaccurate or sensational stories matter to us all.

The content and bias of particular titles are as likely to reflect the interests, attitudes and social experience of their writers as of their readers. However, newspapers and magazines do not hold a monopoly on social attitudes and there is plenty of room for greater diversity of views. It should at least be acknowledged that people have a legitimate right to complain if they feel, for instance, that another's civil liberties might be at risk, without being ignored or castigated as a mere third party or an advocate of political correctness.

It might be revealing if the industry and the PCC were to consider a public consultation to elicit from readers their views about the way specific issues and topics are dealt with by the newspapers. This need not be an exercise to generate formal complaints, but a piece of qualitative market research about reader attitudes.

The views of special interest groups should also not be ignored. Not only are they entitled to an opinion, which is likely to be well-informed and focussed, but the views of mental health charities and refugee organisations have in the past helped the PCC to provide clarification for editors about the use of language and the rights of minorities. The results of such research would at least open up some challenging areas of debate about media representation of minorities.

1.6 The case for oral hearings

The powerlessness experienced by people who become the focus of unwanted or unwarranted press attention is exacerbated by the process currently employed to deal with complaints. The PCC acts as a go-between, assessing the relative merits of each case as the correspondence piles up. If complainants are unsuccessful in gaining the redress they think they deserve, it is almost inevitable that they will blame it on the way the complaint has been managed.

Many who have contacted PressWise believe that the PCC has not understood what their complaint is really about. This may be because their initial letters of complaint are indignant and emotional, but one of the worst ways of dealing with an aggrieved person is to reconstruct their complaint – or allow an editor or media lawyer to interpret the complaint in a way that lets the offending publication slip off the hook.

Relatively few people have confidence in their writing skills, putting most complainants at a major disadvantage against an industry whose stock in trade is using the printed word. Faced with a procedure they might not understand, and a Code designed by editors for editors, it is not surprising if complainants do not trust their own judgement. Some complainants feel they are manipulated into wording complaints to fit the PCC's preferred system of operation, rather than being allowed to pursue complaints on their own terms. This is an inevitable consequence of dealing with complaints solely on paper.

Our experience is that most complainants need to talk through their story in some detail – not necessarily because it is complex, but simply because it is upsetting. Composing a complaint and constructing it rationally around the Code also takes time, and while some may eventually find it a helpful and educational process, others feel it is unfair because the offending story is already in the public domain and they are fighting a rearguard action.

Most complaints are relatively simple, and lend themselves to easy solutions – a correction, publication of a letter, or an acknowledgement of error in a letter from an editor. Indeed, editors in the provincial press, who are much closer to their readers, have devised strategies designed to win back the sympathies of the aggrieved – for example, an apologetic phone call, a meeting, or a bunch of flowers.

However, some complaints are more complex and many complainants would prefer to have it out across a table, and be able to point out precisely where the problems lie. It would be impractical to handle all complaints in this way, but in the interests of natural justice there should be an opportunity for oral hearings, at least in those problematic cases where the PCC considers adjudication may be necessary. This procedure worked well at the old Broadcasting Standards Commission (BSC), and it might assist editors and the PCC to appreciate the damage that can be caused by inept journalism.

Sir Christopher might also give some thought to the idea of mediation hearings where a complainant and the journalist involved (rather than the editor) can discuss a problem calmly in the presence of a neutral third party. At one time this conflict-resolution strategy was employed by the NUJ at the preliminary stage of disciplinary hearings over breaches of its Code of Conduct. Complaints seldom had to be taken further, and sometimes quite positive working relationships developed between the parties.

1.7 Satisfactory sanctions

Most complainants want prompt corrections given equal prominence to the original story, and few with whom PressWise has had contact find the discreet mention of a mistake on a page and at a time chosen by the editor a sufficient remedy. Unapologetic, discreet corrections do little to assuage people's fears that the majority of those who believed the original story will not be disabused. Indeed, it is not uncommon for the disputed facts to be recycled from the cuttings file long after a correction has appeared.

It is not just a matter of expecting an editor to have the grace to correct the public record; natural justice should dictate that the louder the original assertion, the more prominent the correction needs to be. Sir Christopher's suggestion that newspapers should share a standard format to identify PCC adjudications is a step in the right direction. However, that may not always be the most appropriate position or format for apologies and corrections, especially for serious inaccuracies blazoned across a front page.

The solution most would favour is the model recommended by the Younger Committee in 1973, that adjudications, apologies and corrections should be given prominence equal to that of the offending article. Certainly when a tabloid apologises in the style in which the original offence occurred it does make an impact, and few editors would wish to repeat the experience (think Elton John and *The Sun*).

This approach, however, may not be appropriate when dealing with issues of privacy and media intrusion. The last thing people are likely to want, apart from an acknowledgement that wrong has been done to them, is further publicity. It would greatly help the confidence of complainants if they knew what sort of correction they are likely to get if their complaint is upheld, and that a successful complaint would result in cuttings files and archives being appropriately updated. The BSC allowed successful complainants to nominate the papers in which a printed version of the adjudication would appear, and broadcasters were required to announce the outcome at a time most likely to reach the original audience.

The existing industry code contains no specific requirement to ensure that cuttings files and news/feature archives are tagged with corrections to ensure that inaccurate information is not

constantly regurgitated. It is particularly galling for complainants to return repeatedly to an editor or the PCC when this happens – although in at least one case it has meant a newspaper having to pay out damages several times over for repeating a libel. The PCC should insist that cuttings files and archives are 'tagged' with corrections, to avoid repeated errors over many years, especially since international archives are now so easily accessible. There should be automatic reprimands when cuttings files are found not to have been tagged, and it could be a part of the role of a Readers' Editor to monitor the procedure.

As part of the current review of PCC procedures Sir Christopher could perhaps negotiate an addendum to the industry Code setting out the terms of compliance, not only with PCC adjudications but whenever a publication has to admit to its errors.

Editors should be prepared to agree to:

- flag up on the front page where a negative PCC adjudication is to be found;
- establish a regular spot within the news pages for corrections;
- where possible give equivalent prominence to a substantial correction;
- reach agreement with successful complainants about the wording of corrections and/or apologies, or offer a right of reply;
- tag all cuttings and electronic records of the offending article;
- offer compensation should the publication repeat the same breach.

Such tough measures would be less necessary, of course, if every publication ran a regular 'Corrections & Apologies' column – then at least we would all know where to look.

It is claimed that peer pressure makes editors and journalists sensitive to public admissions of error. There may be some truth in this, but the public might be more convinced that peer pressure really does mean something if there were more evidence that persistent offenders do not prosper. There have been few occasions when an executive has lost a job or been demoted after being found in breach of the Code.

1.8 The case for compensation

It is entirely unreasonable that innocent victims of media abuse should be expected to pay the cost of putting things right. People have had to obtain the transcripts of inquests and court cases to demonstrate the veracity of their challenge to a newspaper report. Such documents do not come cheap.

Where genuine costs and hardship are incurred, a successful complainant should be entitled to claim some form of compensation. Breaches of the Code of Practice should be dealt with like any other violation of human rights – with appropriate sanctions, including compensation for the victim.

Anxious to avoid the risk of high awards for damages, editors are reluctant to admit mistakes. Indeed, newspaper lawyers advise that staff should not even acknowledge errors over the phone. This may be sound business practice, but it is no comfort to those who want most of all to obtain a swift correction when a newspaper has published a falsehood. Advertisers expect to be compensated when errors appear in their copy, or publishers fail to honour their contractual obligations in other ways, so why shouldn't successful complaints expect similar consideration? It is extremely unlikely that the possibility of compensation will encourage a flurry of mendacious complaints – newspapers would quickly expose those who tried, even if the PCC were to be entertain them.

Another common argument against compensation is that it would attract lawyers. Introducing a simple compensation system could be accompanied by the proviso that lawyers' fees will not be paid, on either side, regardless of the outcome. And to avoid the necessity of costly legal argument about levels of compensation, the simplest way to deal with the matter would be to appoint an arbitrator (The Complaints Commissioner?) to assess the actual costs to a complainant, or to devise a graded system of nominal compensation depending upon the gravity and consequences of the breach.

There could be a cap upon the upper limit of a few thousand pounds, and publications could be asked to contribute to a fund administered by the PCC, based upon circulation or advertising revenue. Those who fail to set right breaches of the Code in advance of an adjudication would be expected to replenish the fund in line with the compensation awarded. In that way publications that comply with the Code would not have to subsidise the errors of those who do not.

1.9 Should there be fines for breaches of the Code?

The public is more likely to place its trust in a regulator with powers to hit commercial concerns where it hurts most if their agents breach professional or ethical standards. A simple system of grading complaints against a set range of financial sanctions – say, from £1,000 to £10,000 depending upon the severity of the breach – might reassure the public that self-regulation is a serious business. Proprietors would be less likely to tolerate lackadaisical editing if it were to result in a tax on profits. Indeed, were the PCC to levy fines, newspapers would have a strong case for using the ‘double jeopardy’ argument to gain protection against the threat of litigation from successful complainants.

Journalism is not a profession in the conventional sense. However, it carries with it enormous responsibilities. Press freedom would indeed be at risk if editors were not free to make mistakes, and it may not be appropriate to apply direct punitive measures to an individual editor for breaches of the industry code as a matter of course. For a start, the pressures of the production process may make the apportioning of precise liability problematic, and personal liability of this type could be seen as the thin end of a wedge leading to the licensing of journalism. Nonetheless, the public must find it odd that some editors appear to wear their mistakes with pride rather than humility, and wonder why they appear to thrive on their notoriety and move up rather than move on.

1.10 A Media Ombudsman?

The (National Heritage) Select Committee's 1993 Report on Privacy and Media Intrusion mooted the appointment of a Press Ombudsman. But in the new communications environment, cross-media ownership has reached a level that makes it difficult to measure the extent to which a company's involvement in one medium ends and its involvement in another begins. Frequent take-overs, mergers and rebrandings mean that few of those who work in the media, and even fewer consumers of media products, know who owns or controls what.

Old arguments about spectrum scarcity for separate regulation of broadcasting have been overcome with digitisation. Sound, vision, telephony and print are all covered by the same data protection legislation, for instance - and ‘multi-skilling’ means that new generations of media workers are expected to be adept with the latest technology in every medium. It all makes a nonsense of the idea that journalists should abide by different standards as they switch between media. It would be far more appropriate if they were to operate to a single basic code of conduct across all media, including a ‘conscience clause’ to allow them to refuse assignments that might offend against such a code.

These new circumstances strengthen the argument for a genuinely independent regulatory system that protects everyone's rights – including the freedom of the press – with power residing neither with government nor the industry. A single Media Ombudsman could act as a bulwark against erosions of press freedom and deal with appeals from members of the public or publishers when disputes arise about the adjudications of the PCC and OfCom. This would bolster public confidence in the accountability of the print and broadcasting industries.

Since the PCC appears reluctant to take on the full mantle of the old Press Council, the Media Ombudsman might also play a useful role in overseeing the validation of training courses, in tandem with a (unified) National Council for the training of print and broadcast journalists. In particular, the Ombudsman could be given responsibility for ensuring that those entering the media industries are given a thorough grounding in regulation and codes of conduct, and that those already at work receive opportunities to update awareness of their responsibilities through accredited industry-wide in-service and mid-career training on regulatory and ethical issues.

The Media Ombudsman could also conduct research and encourage dialogue between producers and consumers, particularly around ethical issues and reviews of Codes of Practice. Financing for such a post could follow the model currently used in broadcasting, with a mix of public funds to protect the democratic agenda, and contributions from the print and broadcast companies.

2. IMPROVING THE CODE

2.1 Clause 1: Accuracy

Clause 1 (ii) only requires corrections 'when it is recognised that a *significant* inaccuracy, misleading statement or distorted report has been published' (*my emphasis*). It is left to the publication or the Commission to determine what that means. No consideration is given to the significance of the mistake for the people involved in the story.

In the case of a *Big Issue* seller, whose legitimate possession of a car under the government's mobility scheme saw him vilified on the front page of his local paper as a fraudulent scrounger, this cost him his life. A former mental health nurse, who had lost both kneecaps in a motorbike accident and suffered a nervous breakdown that resulted in the loss of his job and the break-up of his family, he had invited reporters into his temporary accommodation for an interview. Their story suggested he was abusing the system and claimed that a man who could only walk with the aid of crutches had 'no trouble running away' when a photographer tried to take his picture.

Distraught because the paper was read by his ex-wife, his children, family and friends, he killed himself after the PCC ruled that the inaccuracies were not 'significant in the context of the story as a whole'. The Commission claimed the reference to his ability to run would be 'taken figuratively'. A simple apology might have saved his life.

When a national newspaper accused a businessman of malpractice, alleging that his office was 'being besieged by customers demanding refunds and threatening to take him to court', the man complained. He conceded that 'three clients had expressed dissatisfaction over the phone in the previous nine months', but felt that hardly justified the paper's claims. The editor's response was to say this was 'a trivial complaint about interpretation'. The term 'besieged', he claimed, had been used in 'the metaphorical sense'. As the complainant asked, 'How were the readers supposed to know that?'

The PCC found the editor's explanation acceptable since 'other descriptions were clearly figurative and unlikely to mislead in the context of the article,' yet the PCC's ruling erroneously described the man as a Company Secretary, laying him open to legal sanctions if the damaging story was to be believed.

2.2 Clause 3: Privacy

If everyone IS 'entitled to respect for his or her private and family life, home, health and correspondence', and intrusions into an individual's private life require the person's consent, there would be a lot of blank pages in the popular press.

Editors feel at liberty to determine who is and who is not a celebrity (indeed, some celebrities owe their status to the arbitrary choices of the newsroom, showbiz and sports pages) and there now seems to be no limit to levels of intrusion. The Mephistophelian pact that so-called celebrities make the moment they respond to media interest is constantly used against them to justify gross intrusions. Even those whose job simply puts them in the public eye (like Anna Ford) are expected to tolerate coverage that most people would find unbearable.

Journalists know that there are aspects of their own private lives which they would not wish to be publicised, but some give little thought to the consequences of making public confidences they receive from distraught lay people who have no experience of the power of the press. One woman, informed by a tabloid reporter of her celebrity husband's infidelity, had the further indignity of seeing her immediate reactions spread all over the paper. She was then dismissed as a 'bitter woman' when she sought to correct errors.

Some people who enter the public sphere as a result of a tragedy feel that their right to privacy is ignored, especially when they are revisited regularly for comments on anniversaries or when similar events occur.

Problems still remain over interpretations of what is considered to be 'a reasonable expectation of privacy'. By accident of economic circumstance, for many people the entry to their home is in a very public place – on a public highway or exposed to public view. Those of wealthier means who can afford to buy their privacy are protected by high walls, long drives and other security measures.

Without a Human Rights Commission to take up test cases, few ordinary citizens can afford to seek a court ruling to define the limits of press intrusion. Yet the press get most exercised when those who can afford the legal route try to clarify what is acceptable intrusion. By mocking celebrities who cannot 'take the heat', newspapers risk alienating readers who have some sympathy when coverage of their idols goes too far. At the same time, the public has become more and more cynical about the motives of celebrities and the press, and the tawdry form of voyeurism that is the 'fame game' diminishes the notion that personal character and human relationships are something to be admired.

These are difficulties that the PCC will continue to struggle with until the tabloids give up on their relentless pursuit of trivia to add glamour and gossip to their pages and bump up their profits.

2.3 Clause 4: Harassment

Clause 4 could be strengthened to warn journalists that their behaviour when obtaining stories may be a factor when adjudicating on complaints.

The recent PCC decision² upholding a complaint about the deception employed by journalists working for the *News of the World* is a welcome precedent. It is rare that complaints about journalists' behaviour are admitted, let alone upheld. Editors may argue that it was not their staff at fault (when they have used copy supplied by freelancers or agencies) but that should not be a valid excuse.

Sub-section (iii) makes it clear that they should not publish material obtained outside the requirements of the Code, but claims by complainants about the misbehaviour of reporters and photographers appear to receive short shrift, since it is often their word against the assurances of an editor or an editorial member of the Commission (neither of whom were present).

2.3.1 Media scrums

The crush of competing media outlets, print and broadcast, outside a building that houses people in the news, is a problem that has to be addressed by both the PCC and OfCom, and understood by everyone involved – including foreign TV crews.

Some events – a train crash, major trial, or international incident – require far higher levels of attendance if the full story is to get out. However, defining what constitutes an 'overwhelming' presence of media professionals depends so much upon location and circumstance that it would be difficult to set a number beyond which the media should not go. What is a disturbing presence in a street or village may go almost without notice in a town or city.

Journalists are used to the 'pool' system, where a couple of representatives from different media cover for everyone – sharing their information. Common sense should prevail when it is clear that more than half a dozen people are assembling outside someone's house, for instance, and those present should automatically agree to pool so that some can withdraw. Failure to do so at the request of, for instance, the family concerned, or the police, should at the very least constitute a breach of the Code.

² PCC adjudication re Elizabeth Noble v News of the World, 2 November 2003

Of course all this requires trust – something that is in short supply in the highly competitive news environment – but it also requires a proper awareness of what constitutes ‘the public interest’. Sometimes media scrums form over the most trivial of events, simply to feed prurient interest, and it is good news that the PCC intends to co-operate with OfCom in seeking to limit them.

What is needed are negotiations at a high level between broadcasters and newspaper and news agencies, and perhaps the police, to establish new ground rules about how to manage media interest where ‘scrums’ are likely to develop.

2.4 Clause 5: Intrusion into grief or shock

Clause 5 would be improved, as the PCC and the Code Committee have been advised before, were there to be specific mention of the sensitivities associated with the coverage of suicide. A systematic review of some 90 research studies from 20 countries,³ tracing the impact of media coverage on suicide rates has demonstrated a potential causal link, especially among vulnerable groups.

The research is compelling and readily available. It gave rise to a leaflet and training materials devised by PressWise on behalf of the International Federation of Journalists (IFJ) and the NUJ.⁴ Under the circumstances *The Sun's* detailed illustration (24 April 2003) of a contraption used by one distressed young man to kill himself should at least have elicited a reprimand from the PCC.

It is 15 years since the press harassment of teenage actor David Scarboro, who had won acclaim for his roles in *Grange Hill* and *East Enders*, threw himself from Beachy Head after several national papers had published inaccurate and damaging stories about his private life, and then pursued him and his family as his mental health deteriorated.⁵ His libel action died with him and his parents subsequently left the country.

A few years later, in December 1992, another teenager, Alan Watson, killed himself when it became clear that his parents' efforts to clear the name of his murdered sister and only sibling Diane were doomed to failure. She had been traduced by a columnist, and later by a popular magazine, but the PCC provides no remedy for expressions of opinion, however hurtful, unless they are libellous or can be shown to incite race hatred or otherwise damage public order. Later a popular magazine added insult to injury by presenting the murderer's discredited version of events as fact, and again her parents sought redress without success, and found themselves out of time when they looked to the European Court of Human Rights for comfort. They still regard the shortcomings of self-regulation as a contributory factor in the death of their son, who was found clutching the offending press cuttings.

Given these dire precedents and the sensitivities that have developed following the controversy surrounding the suicides of Dr David Kelly and Sky News reporter James Forlong, who killed himself after being dismissed for faking a story, it is to be hoped that the Code Committee will give special consideration to this along the following lines:

‘Particular care should be taken when reporting the circumstances of newsworthy suicides to consider the consequences for family members, and the details of suicide methods should be avoided’.

Few family members appreciate that the details given at inquest hearings may be published, and may not have the composure at such a moment to request the Coroner to caution journalists about the intensely private matters that are sometimes revealed. As things stand, it is up to editors to consider how they use the information.

³ *Suicidal Behaviour and the Media: 'Findings from a systematic review of research literature'*, Kathryn Williams & Keith Hawton, Centre for Suicide Research, Department of Psychiatry, Oxford University, 2001 <http://cebmh.warne.ox.ac.uk/csr>

⁴ See IFJ/NUJ/MediaWise leaflet *'Reporting Suicide'* and http://www.presswise.org.uk/display_page.php?id=166

⁵ See the documentary *My Brother David*, Produced by Roger Tonge for BBC TV

There are other aspects of intrusion into grief that deserve public debate, especially during such a prolonged period of war and atrocity. Literally stunning pictures of uninhibited grief dramatically illustrate the horrors of war, but just because the events happen a long way away does not mean that the conventions applied here have no relevance.

While there is legitimate debate about the extent to which war is sanitised when shocking images are kept from us, some thought has to be given to the fact that the front pages of newspapers are on display on high-street newspaper stands. Young children were unwittingly exposed to terrifying images when some papers sought to outdo their rivals by splashing images of the bloody faces of Saddam Hussein's sons across their front pages.

Taste and decency in marketing may be no direct concern of the PCC, but it could remind editors that their responsibilities include avoiding unnecessary harm to young children and others who cannot avoid being confronted by their front pages in the marketplace.

2.5 Clauses 6, 7 & 10: Children

PressWise has done a lot of work on the ethical issues faced by journalists, children and their carers, especially over coverage of the physical, sexual and commercial exploitation of children.⁶

Children make good copy, and the more extreme the circumstances the better. Sometimes the consequences of misrepresentation can be extraordinary. A mother who approached the press in the hope of gaining publicity thought it might help the parents of children suffering from Attention Deficit Disorder to obtain the special assistance they need. She was vilified. Her child was branded 'Worst Brat in Britain' and 'Terror Tot', her marriage collapsed and she left the country.⁷ When she returned a decade later and championed the treatment her child had received in the US, her local authority banned her from talking to the press, describing her as a trouble-maker.

The Code's Clauses on Children (6, 7 & 10) have been much improved since then, and we are pleased to have played our part. However, the industry does not yet seem to have grasped that since 1989 governments throughout the world (apart from Somalia and the USA) have signed up to the UN Convention on the Rights of the Child.⁸ Children's rights have been codified and acknowledged by the vast majority of nations. UK law has been modified to acknowledge those rights, which include several related to the use of and abuse by the media.

There has been much shouting from the press benches about the reluctance of some schools to allow unfettered access to the press – ignoring one of the most basic requirements of Clause 6 of the Code that the consent of a responsible adult must be obtained. Most parents are delighted when their children's achievements make it into the press – but some have perfectly valid reasons for avoiding publicity. They must at least be given the opportunity to opt out. That is the school's job, but editors should not be averse to checking that it has been done.

More to the point, errant juveniles are supposed to have some modicum of protection from exposure in the media. Persistent offenders may need special treatment, but demonising them in the press is not part of it. Week after week the courts are challenged over restrictions about the identification of juvenile offenders. Rather than appreciate that society may be better served if they have the opportunity to learn the error of their ways away from the notoriety of media attention, the

⁶ See for instance material on our website <http://www.presswise.org.uk/children> especially *Child Exploitation and the Media Forum Report and Recommendations* Ed. Mike Jempson, ACHE/MediaWise/Smallwood Publishing, 1997; and *Information and Child Rights: The Challenge of Media Engagement. An international survey of journalistic standards* by Mike Jempson & Bill Norris, IFJ/UNICEF, May 1998 (all available from MediaWise)

⁷ Quoted in *The Genesis of the Freedom and Responsibility of the Press Bill* by Clive Soley MP, Appendix 2, *Report of Special Parliamentary Hearings on Freedom and Responsibility of the Press* Edited by Mike Jempson, Crantock Communications 1993 (available from MediaWise)

⁸ See <http://www.uncrc.info/> and www.unicef.org/magic

press mount a persuasive argument that the public has a right to know exactly who such offenders are, what they have done, and their family circumstances. Apparently young offenders do not benefit from the protection of the Code, despite the fact that it claims to give children a chance to reach 18 before they fall prey to the predations of the media.⁹

Were the PCC to be more proactive over genuine issues where the public has a right to know, it might take up cudgels on behalf of the press to gain access to the workings of family courts, where all manner of injustices may be occurring beyond the glare of public scrutiny, as illustrated by recurrent controversy over diagnosis of Munchausen Syndrome by Proxy.¹⁰

2.6 Clause 13: Discrimination

Clause 13 assumes that only a named individual can be hurt by 'prejudicial or pejorative' coverage. This flies in the face of reason and experience. Sweeping statements about refugees and asylum-seekers, for example, do little to improve community relations and it is clear that assaults and abuse of 'foreigners', including those who were born in Britain or have lived here for some time, are both encouraged and legitimised when newspapers run negative stories. Ethnic minorities in the UK have frequently received prejudicial coverage¹¹ yet the PCC has been able to avoid adjudicating on more than 600 complaints about allegedly racist or xenophobic coverage since 1991.

The clause could be further strengthened by the inclusion of 'legal status' among the list of conditions covered by the Clause. This would also provide some protection for transgender individuals whose circumstances are often covered with little sympathy or understanding.

We are all diminished when community relations break down as a result of inaccurate or sensational coverage, and since some minorities, like Roma, other Travellers, refugees and asylum-seekers are unlikely to be aware of the coverage that has resulted in attacks upon them, this is one areas where the PCC should be willing to consider more third-party complaints. MediaWise has produced an information resource for journalists to help ensure, at least, that the correct terminology is used when reporting asylum issues.¹²

Nik Gowing, former diplomatic editor of Channel 4 News, has written of the immense risks of journalists relying too heavily on secondary sources with their own agendas when covering crises in unfamiliar territory.¹³ He argues that the distorted picture which emerged from Rwanda, Burundi and Uganda during the 'refugee crisis' in 1996-97 may have allowed "officially-authorized ethnic slaughter [in Rwanda] to be carried out unseen and virtually unreported". A Glasgow Media Group study¹⁴ of the same coverage stressed that it is essential for journalists to know more about the issues they are dealing with if the public is not to be misinformed.

Set against such massive disasters the damaging consequences of simple errors closer to home may seem petty to editors, but they are no less problematic. Inaccurate coverage can unduly influence policy choices by government, for example, as in the case of refugees and asylum-seekers. The PCC and the industry Code Committee may need to develop new procedures to deal with third-party complaints about the likely consequences of inaccurate or sensational coverage.

⁹ Emma Brockes, of *The Guardian*, wrote movingly about the death in 2000 of 18-year old Gareth Brogden whose life was irreparably damaged after he was branded 'Balaclava boy' in the press after a misdemeanor as an 11-year old.

¹⁰ See *Munchausen Syndrome by Proxy: A Study in Secrecy* by Brian Morgan in *Child Exploitation and the Media Forum Report and Recommendations* Ed. Mike Jempson, ACHE/MediaWise/Smallwood Publishing, 1997

¹¹ See also *Telling it like it is: Report of the Ethnic Minorities and the Media Forum* Ed. Mike Jempson, PressWise/CRA May 1998

¹² *Reporting on Refugees and Asylum-seekers*, MediaWise/NUJ/UNHCR leaflet 2004

¹³ *New Challenges and Problems for Information Management in Complex Emergencies: Ominous lessons learnt from the Great Lakes and Eastern Zaire in late 1996 and early 1996*. Background paper for the Dispatches from Disaster Zones Conference, London, 28 May 1998 by Nick Gowing.

¹⁴ *The Zaire Rebellion and the British Media: an analysis of the reporting of the Zaire crisis in Nov 1996 and 1997* by the Glasgow Media Group. Background paper for the Dispatches from Disaster Zones Conference, May 1998, Ed. Greg Philo.

Meanwhile it is important to note that the PCC has been receptive to ideas for improving coverage of minorities. Since the days of Lord Wakeham a series of warnings and reminders have gone out to editors to beware the consequences of inflammatory and inaccurate coverage. We have been pleased to work with PCC staff and regional editors on the issue of refugee and asylum coverage, and the guidance note issued last year¹⁵ was a significant event. Unfortunately there is continuing evidence that the guidance is being honoured in the breach rather than the observance, and the weakness of the complaints system makes it difficult for those affected to put the record straight.

2.6.1 Photography

The code has no specific clause on photography, although several references are made to the difference between acceptable and unacceptable circumstances under which pictures can be obtained. Some papers sail perilously close to misrepresentation by using 'stock' pictures as illustrations. This has occasionally given rise to complaints – especially from those whose images are used - but it might help if the Code contained advice on obtaining appropriate permissions or at least giving indications that the images are not of actuality but are merely for illustrative purposes.

In the era of digital camera it is time that the Code also included some guidance about the circumstances under which manipulated images may (or may not) be published. Montages produced at the time of the Rose West trial, for example, gave rise to complaints from witnesses that they appeared to have been photographed in the Gloucester 'dungeon' when they had not.

Perhaps the PCC should consider an additional clause along the lines: 'Manipulated images should be clearly marked as such, and should not be used to illustrate hard news stories except in exceptional circumstances'.

2.6.2 Chequebook journalism

MediaWise regards chequebook journalism as the antithesis of press freedom and has made numerous interventions in public debate about it.¹⁶ It can give rise to all manner of unethical practices, yet the Code of Practice is silent about it, other than in the case of payments to witnesses and convicted criminals.

If its role is to protect the public from unethical media practices the PCC should be insisting that such arrangements are conducted honestly and with a proper regard for the truth. Readers should always be informed when money has been paid for revelations, and to whom.

2.6.3 Informed consent

Which bring us to the issue of 'informed consent'. Broadcasters are obliged to ensure that contributors to programmes are fully aware of their purpose and style. No such obligation applies to print journalists. For news reporters that is perfectly acceptable. They are collecting information from witnesses, participants and experts about current events.

Investigative journalists may have to sail closer to the wind to obtain the co-operation of their sources, but should be able to rely on a strong public interest defence if their efforts are designed, for instance, to uncover wrongdoing.

But there are areas in which the concept of informed consent should apply, and the PCC should be prepared to challenge editors about the extent to which people who have been persuaded under false pretences to contribute to features designed to shock or titillate readers. When human interest stories are 'sexed up' to make them more sensational, it should not be enough of a defence to say that the publication had the willing co-operation of the protagonists.

¹⁵ PCC Guidance note on Refugees and Asylum Seekers, issued 23 October 2003.

¹⁶ See for instance PressWise evidence to the National Heritage Select Committee quoted in *Press Activity Affecting Court Cases*, HMSO Jan 1997 ISBN 0 20 207097 0. See also PressWise Briefing Paper *Cheque-book Journalism*, and leaflet *'What's the cost of selling your story to the papers'*. Available from MediaWise.

The PCC appears to operate on the assumption that anyone whose story appears in a publication, even without their consent or co-operation, should be sufficiently 'media savvy' to know how to handle the situation. They are supposed to know how the media operates and to have their own strategy for dealing with unwelcome approaches.

Complainants are supposed to appreciate that simply refusing to co-operate with a newspaper is no guarantee that a story about them will not appear. Few do. They are supposed to know that if they are concerned about how they have been approached, they should contact the editor at once. Few appreciate that by taking the initiative and contacting the newspaper they are likely to be trapped into providing useable quotes.

Newspapers and magazines are reluctant to offer copy approval to their subjects – as if the journalist always knows better than the subject what the 'truth' really is. Too often we have been told that the finished product bears little resemblance to what had been promised, and damaging tweaks and twists have been added to give the piece more of a *frisson*. Pandering to the prurience or prejudices of the readers is no excuse for abusing the trust of an informant, and nor is the desire to create a catchy headline or bump up circulation with something shocking. Checking final copy with key contributors does not mean handing them editorial control – it could be regarded as a courtesy to them and the readers, as a way of making sure that the *facts* are accurate.

Since achieving accuracy should be the goal of any fair-minded journalist, the PCC should see to it that members of the public are not bamboozled into contributing to a fiction. No clauses exist to cover such complaints, which may explain why some of those who are caught out do not protest to the regulator.

2.6.4 Conscience clause

Journalists operate in a hostile employment environment with no formal career structure, and fierce competition for jobs. There is no universally respected 'conscience clause' that allows them to refuse to act unethically. Indeed, it would appear from recent pronouncements¹⁷ that editors do not think consciences are something journalists should concern themselves with.

It is an attitude that may come back to haunt them. Like most people, journalists are prone to take the easy way out if it presents itself. Especially now that so many are freelancers or on short term contracts, they may feel their personal interests are best served by satisfying the demands of editors whose own security rests upon improving the commercial prospects of their titles. If editors and news editors are to be their consciences, they may assume that 'anything goes' in pursuit of a good story – and who then will reap the whirlwind?

The idea of a Conscience Clause is something Sir Christopher may find it informative to raise with members of the public during his UK tour.

¹⁷ See *Press Gazette*, 12 March 2004, p.1, 'No conscience clause in revised Editor's Code'