

Press Complaints Commission: History and Procedural Reform

1. The origins of the Press Complaints Commission
2. PressWise and the Press Complaints Commission
3. Improving current PCC procedures

1. The origins of the Press Complaints Commission

The origins of formal self-regulation by the press go back to 1947 when the National Union of Journalists, which has had a Code of Conduct since 1936, argued for a Royal Commission to investigate the risk to freedom of expression caused by increasing concentration of ownership of the press and the potential influence of advertisers on editorial content.

The First Royal Commission on the Press, set up 'with the object of furthering the free expression of opinion through the Press and the greatest practicable accuracy in the presentation of the news', reported in 1949. It proposed that the industry should set up a General Council of the Press to govern the behaviour of the press, from conditions of employment and training to issues of ownership, and to promote the interests of the consumers and conduct research into the long-term social and economic impact of the print industry.

It was not until 1953, after the threat of political action to establish statutory regulation, that a General Council was set up by the industry to preserve press freedom, promote ethical standards, and review threats to the public's right to information.

The General Council was severely criticised by the Second Royal Commission on the Press which reported in 1962, particularly for not including lay members, and proposed statutory regulation unless its performance improved.

The General Council reformed itself as the Press Council and recruited 20% of its members from outside the industry. It began to issue more authoritative rulings on press misconduct and on perceived threats to press freedom, publishing booklets on Contempt of Court (1967), Privacy (1971) and Defamation (1973).

It was further criticised by the Younger Committee on Privacy in 1973 which called for corrections to be given equal prominence to offending articles, and commented, 'We do not see how the Council can expect to command public confidence in its ability to take account of the reactions of the public unless it has at least an equal membership of persons who are qualified to speak for the public at large'.

The Third Royal Commission on the Press, set up in 1974 and chaired by Lord McGregor of Durris, was even more critical of the effectiveness of the Press Council. His 1977 report commented, 'It is unhappily certain that the council has so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers', and argued that it should produce a written Code of Conduct for journalists.

All of these critics focussed on the apparent partisanship of the Press Council, which rejected the idea of a Code when it responded to the Third Royal Commission in 1981. By this time the NUJ had withdrawn from membership of the Press Council on the grounds that it was 'incapable of reform' (1980), and media unions had helped to set up the Campaign for Press & Broadcasting Freedom (1979) which supported a series of unsuccessful Right of Reply Bills and argued for statutory controls of the press.

In 1989 Sir David Calcutt's Inquiry into Privacy & Related Matters was set up by the Conservative Government following completion of the Commons Committee Stage of two Private Members Bills

concerned with Privacy (John Browne MP, Con) and the Right of Reply (Tony Worthington MP, Lab). Both Bills had attracted considerable cross party support because of public concern about the lack of ethical behaviour by some newspapers during the 1980s.

At this time the Press Council, now chaired by Louis Blom-Cooper (currently Chairman of the PressWise Trust) had set about reforming itself and issued its first-ever Code of Practice. The NUJ decided to rejoin. Sir David's report (1990) concluded in 1990 that existing self-regulatory arrangements for the press should be revised, and that if it were demonstrated that a new Press Complaints Commission had failed to work effectively, a statutory tribunal should take over the job of dealing with complaints about the press.

The industry responded by transferring its funding from the Press Council to the Press Standards Board of Finance (PressBof), currently chaired by Harry Roche (Chair & Chief Executive of the Guardian Media Group plc), which set up Code of Practice Committee, chaired by Sir David English (Chair & Editor in Chief, Associated Newspapers - since deceased), to devise guidelines against which editorial practice might be judged.

The Code was subsequently endorsed by proprietors and editors and revised, and currently has 16 Clauses. Complaints may only be considered if there is evidence that at least one of these clauses may have been breached.

The vehicle chosen to police the Code was the Press Complaints Commission established by the newspaper industry in January 1991. Its brief was solely to adjudicate on complaints, rather than to tackle the broader issues of press freedom about which the Press Council had reported.

The PCC is funded entirely by the newspaper industry via PressBof to which five newspaper trade associations contribute over £1m per annum. It was originally chaired by Lord McGregor of Durriss who brought with him staff from the Advertising Standards Authority who gradually replaced former staff from the Press Council. The overwhelming majority of the original Commission members were either working in or closely associated with the newspaper industry, but the NUJ was excluded. The then Heritage Minister David Mellor MP commented that the press were 'drinking at the Last-chance Saloon'. He was later to be driven from office after a press campaign which highlighted aspects of his private relationships.

Meanwhile Sir David Calcutt was asked to review the new system of self-regulation after it had been operating for 18 months, and in 1992 Clive Soley MP introduced his Freedom & Responsibility of the Press Bill proposing the creation of an Independent Press Authority to adjudicate on complaints and defend press freedom, and winning substantial cross party support. Both he and the National Heritage Select Committee held hearings in Parliament about the behaviour of the press. The Soley hearings, chaired by Patrick Cormack MP (Con), were to lead to the formation of PressWise when his Bill failed to reach the statute book.

In his second Report (January 1993) Sir David Calcutt was highly critical of the operations of the PCC:

'I therefore regret that I have reached the conclusion that the Press Complaints Commission, as set up by the press, has not proved itself to be an effective regulator, and have had to recommend that the Government should now introduce a statutory regime.'

He proposed a number of what many regarded as draconian restrictions on the press.

His report itemised a series of recent instances in which the press had published information about the private lives of senior politicians, and the press were forthright in their rejection of his conclusions. Startling revelations about leading Conservative politicians continued to make headlines, and for a time there appeared to be a stalemate on the issue of press regulation.

The Government delayed making a decision about the Calcutt proposals until the summer of 1995 when it responded to the 4th Report of the National Heritage Select Committee on 'Privacy & Media Intrusion'. The Secretary of State for National Heritage, Virginia Bottomley MP, announced that statutory controls would not be introduced; instead she issued a series of recommendations for reform of the PCC.

In the intervening period the PCC had increased the level of lay representation, and appointed a new Chairman, Lord Wakeham, a former Conservative Government Chief Whip. In addition to the Chairman the Commission is now comprised of seven senior editors and eight 'lay' members.

In 1998, following the death of Diana, Princess of Wales, and the ensuing furore over press harassment, the PCC made a number of changes designed to strengthen the industry's Code of Practice. This was the ELEVENTH time the press had been given an opportunity to put its own house in order in the last fifty years. While welcoming the changes - many of which followed recommendations we have been making for years - PressWise remains unconvinced about their efficacy.

Yet more changes, designed (according to Lord Wakeham) to "strengthen the protection of the vulnerable," were made in December 1999. The revisions recognise changes in the legislative scene following the passage of the Youth Justice and Criminal Evidence Act of 1999. The main change, to Clause 10 of the Code, directs editors to pay particular regard to children who are victims of, or witnesses to, crime. There are also changes to the public interest definitions in the Code. In general, PressWise welcomes these alterations.

2. PressWise and the Press Complaints Commission

As an organisation PressWise is agnostic on the issue of statutory regulation but recognises that statutory controls on the press are unlikely to be introduced by this or the next government.

However we believe that Freedom of Information legislation would enhance the role of the press as a watchdog of those who govern or control the public, and that incorporation of the European Convention of Human Rights into British law (now imminent) will at least provide some safeguard of the individual's right to privacy as well as protecting freedom of expression.

In the meantime it is especially important that the current system of self-regulation should be as transparent and as independent as possible. We appreciate the Commission's efforts to distance itself from the industry that funds it, but it remains true that it is entirely funded by the industry and there is a common perception, even held by the current Chairman of the PCC, that the Commission is the industry's way of staving off statutory controls.

As a genuinely independent advocacy service, PressWise sees its role as complementary to that of the PCC. We provide a service primarily to complainants who are unpractised in the ways of the press. Our function is to assist them to appreciate how a story may have come to be published, to identify the errors in the published copy, to analyse the way in which information has been collected, and to advise them on the best procedures to adopt in order to gain a reasonable hearing from the PCC.

We regard it as part of our function to provide constructive criticism of the powers, procedures and practice of the PCC, in accordance with the needs and perceptions of our clientele.

Since 1994 PressWise has established a good working relationship with the PCC, and has successfully processed a number of complaints. The PCC has been referring complainants to PressWise since early 1995, some of whom assume initially that we are an arm of the PCC.

We have helped to draft apologies and corrections which have subsequently been published, and we have alerted the PCC to potential breaches of the industry's Code of Practice, particularly with reference to 'buying up' and harassment of witnesses prior to the trial of Rose West. It has been accepted by the PCC that we can represent clients providing 'they give (PW) appropriate authority to act on their behalf'. (letter to PressWise from Mark Bolland, 29 February 1996)

If the PCC wishes to convince the public that it is prepared to ensure that complainants receive genuinely independent assistance in formulating their complaints and assembling appropriate evidence, it should inform complainants about the existence of PressWise in new editions of its 'How to complain' booklet.

It is in everyone's interest to discover levels of 'customer satisfaction' with the effectiveness of the PCC, especially in the light of past criticism. PressWise believes this can best be achieved by an independent survey of those who have made complaints to the PCC, and would welcome an opportunity to supervise such research, with the co-operation of the PCC and without compromising confidentiality, in order to discover ways of improving mechanisms for assisting complainants and to make PCC procedures more transparent.

The PCC describes itself as 'an independent tribunal which deals with complaints and (it) must be as independent of groups such as PressWise as it is of the press and all other vested interests' (letter to PressWise from Mark Bolland, 29 February 1996). Nevertheless its own funding arrangements link it irrevocably to the industry it is supposed to regulate.

Newspapers have been in the forefront of criticism of the other systems of self-regulation, notably the Police Complaints Authority and Parliament, and have always claimed to champion the consumer and the underdog. They cannot be surprised if similar criticisms are turned against them.

Although the PCC recognises the value of PressWise in ensuring that complainants are not disadvantaged in their dealings with the press and the complaints procedures, it would appear that those who buy and read newspapers, most of whom cannot afford recourse to law, cannot rely upon the industry or government to provide support in attempting to gain redress when journalists or editors get things wrong.

In a letter to the Hon. Bernard Jenkin MP, Grahame Thomson, Secretary and Treasurer of PresBof advised (26 June 1995) 'the Directors (of PressBof) consider that it would not be competent for them in terms of the Memorandum and Articles of Association to make a contribution to PressWise. It is probably worth saying that the industry believes that it has established in the independent Press Complaints Commission a user friendly body.'

In a letter to PressWise Director David Joyce, the Prime Minister's Press Secretary remarked (28 June 1995): '(Ministers and officials at the Department of National Heritage) have explained that it would not be appropriate for the Government to give funds to a body which appears to have some of the same functions as the Press Complaints Commission'.

3. Improving current PCC procedures

- a. Code of Practice
- b. The Press Hotline
- c. Third party complaints
- d. Oral hearings
- e. Time period
- f. Corrections
- g. Electronic storage and retrieval
- h. Privacy: the compensation fund

a. Code of Practice

PressWise urges the PCC to ensure that at least one person who would be readily accepted by the public as holding 'common sense' views and with a record of supporting consumers in their dealings with major service providers should be appointed to its Code of Practice Sub-committee.

We welcome the suggestion that there should be a lay element in the PressBof Code of Practice Committee, and are disappointed that the industry has rejected this proposal. PressBof might consider approaching the NUJ, the largest organisation representing journalists in Britain, with a view to appointing working journalists rather than merely editors to the Code of Conduct Committee.

As the industry has been quick to point out in the debate about statutory regulation, there is a world of difference between a voluntary code and one imposed as a condition of service. However we consider it is proper that all Editors, who are ultimately responsible for the content of their publication, should be required to uphold the PCC Code of Practice as part of their contractual obligations and as a public indication of their commitment to self-regulation.

Editors should make it clear in writing to all staff and freelance journalists, as well as to their readers, that their publication operates within the terms of the industry's Code of Practice. However it would be inadvisable to incorporate the Code into non-managerial staff contracts, since staff representatives have had no say in devising the Code and play no part in its policing.

PressWise believes that consultation and negotiation with bodies representing journalists is vital if the industry is to persuade the public that there is common agreement on what constitutes ethical standards within the trade, and has encouraged contact between the NUJ and the PCC.

The industry Code is concerned with protecting publications from criticism, but it was closely modelled on the 60-year-old NUJ Code of Conduct which employers have always been reluctant to recognise. The NUJ Code deals with how journalists do their job. One measure which might improve public perceptions of the industry's commitment to ethical standards would be for editors and proprietors to recognise the Codes of Conduct devised by journalists' trade unions and professional bodies.

Equally, if not more important, proprietors and editors should acknowledge the right of journalists to refuse to undertake tasks which appear to breach ethical codes. Ideally journalists' contracts should include a 'conscience clause', and they should not feel obliged to conduct themselves unethically merely to protect their job.

The industry's Code of Practice should be amended to include reference to material circulated or held in electronic databanks, and the PCC should ensure that when errors are corrected, electronically stored versions of the story are also tagged with the correction.

b. The Press Hotline

The notion of a free press is undermined if any person is given the right to censor material in advance of its appearance in a newspaper. For that reason we are opposed in principle to any form of 'prior restraint'.

However, we welcome the idea of a Hotline to alert editors in advance to possible breaches of the Code, an approach we ourselves have pioneered. It is particularly important if there is a serious risk of unnecessary suffering or harm being done to innocent people by the publication of text or photographs, that there should be an agreed method for advising editors of the risks and potential consequences of publishing.

PressWise believes that this 'early warning system' should not be threatening, nor should it bind Editors in any way. Ideally it should be linked to issues raised by the Code. Editors must be free to make their own judgements and to offer an overriding 'public interest' defence. However, if an item is published and a complainant is able to show that it has caused unwarranted distress or harm to innocent parties, the fact that advance notice was given should be taken into account when adjudicating the complaint.

c. Third-party complaints

Consumers have the right to complain if they purchase sub-standard goods or do not get 'value for money'. (On that basis it might be considered legitimate for any reader to complain if the newsprint comes off on their fingers & clothes!). Newspapers purport to offer reliable information to all their readers, and not just to those who are the subject of a story. Many readers rely upon their newspaper to supply sufficient information for them to be able to make up their own minds about current events and even make decisions about their lives. Indeed newspapers actively advance points of view and seek to influence their readers with editorials and comment columns.

All the more reason why third-party complaints should be given more consideration. Yet according to its 'How to complain' leaflet the PCC has the right to decide whether or not complainants are 'directly affected by the matters about which they complain'.

PressWise recommends that the PCC should adopt greater flexibility in making choices about which third-party complaints it is prepared to entertain, and make clear precisely why one such complaint merits greater attention than another. A clear definition of 'directly affected' might also help complainants to decide whether or not they qualify.

For example, any black person or gay man might reasonably object if a newspaper published inaccurate or prejudicial material about black people or gays, even if they themselves are not mentioned by name. In which case why is it unreasonable for a white person or a heterosexual woman to complain as readers if they feel that the same inaccurate material was likely to cause prejudice against black people or gays?

The content and 'bias' of particular titles are as likely to reflect the interests, attitudes and social experience of the people who write for them as they are of the readership. 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 fobbed off as a 'third party' or an advocate of 'political correctness'.

It might be revealing if the industry were to consider promoting a consultative exercise during which readers are encouraged to submit comments about the way specific issues and topics are dealt with by the newspapers. This would not be a request for formal complaints but an exercise in qualitative market research designed to discover more about reader attitudes. Pressure groups may be among those most likely to respond, but they are entitled to an opinion and many will have undertaken their own research. The results would at least open up some challenging areas of debate about representation.

d. Oral hearings

One of the biggest complaints we receive about PCC procedures is that complainants feel they are not allowed to fully express their views, whereas the newspapers have already published their version of events. Some complainants feel they are manipulated into wording complaints to fit the

PCC's preferred system of operation (eg. linking a complaint directly to a Code which most people have never seen before) rather than being allowed to pursue complaints on their own terms, as happened in the days of the old Press Council.

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' by what is regarded as a part of the very industry that has upset them. Nor is this just a matter of a jaundiced perception. There have been occasions when it has appeared that the PCC has not understood what the complaint is really about. To 'construct' a way of dealing with a problem and get it wrong is probably the worst way of dealing with an aggrieved person.

This is one of the consequences of dealing with complaints solely on paper. 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.

In our experience most complainants need to talk through their complaints in some detail (not necessarily because they are complex, but simply because they are upsetting). The process of both composing a complaint and constructing it around the Code can be time-consuming. Some may find this a helpful educational process but many would prefer to 'have it out' across a table, and be able to point out precisely where the problems lie.

PressWise believes that in controversial cases, especially where the Commission meets to adjudicate, there should be an opportunity for oral hearings in the interest of natural justice.

Thought might also be given 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. This conflict-resolution strategy was adopted successfully 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.

PressWise would welcome the opportunity to be able to attend oral hearings where requested by complainants, and to speak on their behalf if appropriate, especially in respect of journalistic practices with which a complainant may be unfamiliar.

e. Time period

The PCC says that 'usually' it will consider complaints made within a month of publication or the editor's reply to a complaint. No explanation is offered for this arbitrary arrangement. In the more ephemeral broadcast media the time limit is far longer, with tapes being kept for three months. Why not a similar period for newspapers, which are among the most accessible public records available, in libraries and on databanks? Even in the proposed reform of the Defamation Act the time period is set at one year.

It will be rare to find such a long delay between publication and complaint. However PressWise is frequently approached by people upset by unfair coverage who were unsure in the first instance about whom they could turn to - the last people they will ask for advice about making complaints is the offending newspaper. Those who have approached newspapers report experiencing what are felt to be delaying tactics, especially in the length of time it takes some editors to reply. As a result legitimate complainants have fallen foul of the PCC's one month time limit.

In its letter to late complainants the PCC asks people to 'justify' the delay. This places the 'guilt' at the door of the aggrieved person. A change of wording (eg. to 'it would be helpful to know what has caused the delay in making your complaint') would at least make complainants feel that there are valid excuses which will not be held against them.

It is also 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. It should not be forgotten that most

complainants have to compile their case in their spare time and with few have the necessary skills and resources at their disposal to produce effective challenges.

PressWise recommends that the PCC should be more flexible about its time limit, and avoid laying down arbitrary reasons about why it is reasonable to claim that someone is 'out of time'.

The PCC tends to refer complainants to PressWise for assistance when the case is complex or complainants are particularly distressed. Under these circumstances, and especially because lack of resources means that PressWise relies heavily on volunteers, it is vital that the PCC allows some flexibility in the timetable for dealing with the complaint.

f. Corrections

Most complainants want a prompt and prominent correction where inaccuracies have been published. We welcome the fact that some newspapers now have a regular set place close to the front of the paper where corrections are to be found. However that may not always be the most appropriate position or format for apologies and corrections, especially for serious inaccuracies or front page stories with sensational headlines.

The ideal solution, and the one favoured by most complainants, would be to follow the model recommended by the Younger Committee (1973) that adjudications/apologies/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. Newspapers would only be 'full of corrections' if they had first been full of errors. 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.

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 databanks being appropriately updated.

The PCC should negotiate a formal agreement with editors about the nature and form of corrections, so that complainants can know what to expect and not be unnecessarily disappointed about the redress they obtain. It may be worth discussing with editors a 'sliding scale' of types of correction (as happens with negotiated apologies in libel cases), from lineage to 'display', as it were.

g. Electronic storage and retrieval

The PCC should insist that cuttings files and databanks are 'tagged' with corrections, to avoid repeated errors over many years, as frequently happens especially now that international databanks are so easily accessible. A code of conduct on this should be agreed with editors, with automatic reprimands when it is breached.

h. Privacy: the Compensation Fund

PressWise is less than happy about Mrs Bottomley's 'insurance policy' proposals for an industry-financed compensation fund for victims of intrusion. This could be used to justify continued intrusion into the lives of people who lack financial resources to defend themselves.

Editors would do better to guarantee prompt and prominent corrections and apologies, which is what most complainants want. The public might be better convinced of the industry's commitment to ethical journalism if it were to contribute to the cost of an independent advocacy service like PressWise.

Certainly it is unreasonable that innocent victims of press abuse should be expected to pay the cost of defending their reputation. Where genuine hardship, including the need to relocate, has resulted from inaccurate or sensational coverage, a successful complainant should be able to claim some form of compensation from the offending publication.

However, PressWise sees no reason why all newspapers should be expected to contribute to a fund that may be drawn on by a few. Perhaps a system of 'quality bonds', as required of licencees under the Broadcasting Act, might be considered as an alternative. The other alternative is to allow the PCC the power to impose a levy (based on circulation or advertising revenue) or administer a sliding scale of compensation payments for serious breaches of the Code. After all, advertisers expect to be compensated when errors appear in their copy, or print or broadcast publishers fail to fulfil their side of the contract.

Mrs Bottomley was right to reject the notion of privacy legislation directed specifically against the press, but we note that she makes no mention of the need for a Freedom of Information Act which would allow and encourage press investigation into matters of public importance rather than private behaviour.

PressWise favours the incorporation of the European Convention of Human Rights into British law, conferring privacy rights upon individuals as well as protecting freedom of expression, and supports the call for a comprehensive Freedom of Information Act.