

Press Complaints Commission Procedures

A commentary derived from the debate in the House of Lords on the Mary Bell Case: Press Complaints, 27 January 1999 (*Hansard*, Cols. 1110 -1126)

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1. Journalistic ethics?

A thorough grounding in ethics is neither an essential nor even, in some employers' eyes, a desirable prerequisite for a journalist. The job of the journalist is to gather information and represent it in ways that will successfully communicate with their target audience. Yet as the various industry Codes, and the existence of both voluntary and statutory regulators indicates, journalists are expected to operate in a more or less ethical way.

However, as David Randall, a former assistant editor of *The Observer*, put it in his book *The Universal Journalist*: 'the high-minded in the business attempting to teach their morals to the fast and loose at the popular end...stand as much chance of having an impact as someone trying to advocate celibacy to a group of sailors arriving home in port after six months at sea.'

Broadcast journalists must work within fairly stringent guidelines backed by statutory powers of the ITC, the Radio Authority, and the Broadcasting Standards Commission. Each broadcast company adds its own gloss to the rules laid down by the regulators, and the BBC has its own detailed Producer Guidelines and operates an internal system for dealing with complaints. Some newspapers retain an internal 'ombudsman' but they all rely upon the PCC to manage complaints.

Between them these regulators receive some 10,000 complaints a year from those members of the public tenacious enough to discover how the system works and strong enough to cope with the complaints process. Few are successful but this figure suggests that veracity and integrity are expected of journalists.

It is a view held by the trade itself. Most journalists in the UK are members of the National Union of Journalists (NUJ) which has had a Code of Conduct since 1936 and which called for the Royal Commission on the Press (1947) to look into press standards.

The industry's subsequent reticence to set up a General Council of the Press led to the draconian Defamation Act of 1952, and ever since the Press Council was established in 1953 the effectiveness of self regulation has been found wanting - by the Second Royal Commission on the Press (1962), the Younger Committee on Privacy (1973) and the Third Royal Commission on the Press (1977).

Ten years ago, when the Press Council, under the chairmanship of Louis Blom Cooper QC, did at last adopt a formal code against which editors and journalists might be judged, the industry withdrew its funding in favour of a new body - the PCC.

The PCC was set up by the industry as an antidote to Sir David Calcutt's proposals for tighter statutory regulation over intrusive press coverage of private lives. It is entirely funded by the industry and polices a Code of Practice devised by the industry, offering the public is left with an entrenched system of self-regulation designed primarily to protect one of society's most influential forces from

statutory regulation. As Viscount Astor said in the recent debate: 'We must remember that the Commission is a self-regulating body which is run largely for the benefit of the industry'.

On the rare occasions breaches of the industry's code are formally upheld (approximately 1% of all complaints made to the PCC since 1991) all an editor is required to do is publish the PCC's ruling. There are no fines and no compensation for the victims (some of whom have lost jobs, family, friends, and even their lives) - unless of course they can afford to mount a successful legal action.

'At the moment the people see only a body which claims unique privileges to itself without any of the concomitant responsibilities...prepared to change...but only when it suits them. They see a body scornful of whether or not its proceedings command public confidence. It cannot go on like this.'

That was how *The Guardian* challenged parliamentary self-regulation in a leader column (Nov 1996). It went on to quote Lord Nolan: 'the public needs to see that breaches of rules are investigated as fairly, and dealt with as firmly by Parliament, as would be the case with others through the legal process'.

Change 'Parliament' to 'the Press' and you have, in a nutshell, the case for a more independent and effective system of press regulation which would be supported by most of those who come to PressWise for advice and many journalists besides.

2. The plight of the complainant

Most of the people who come to PressWise are 'ordinary people', confused, angry, and shocked to find themselves in the public eye. Many express an anxiety extending almost to paranoia, convinced that 'everyone believes what is in the papers' and that journalists are watching their every move. It is not a state of mind conducive to preparing coherent complaints, which may explain why editors find it easy to dodge criticism by dismissing so many out of hand.

They cannot believe it is happening to them, nor that it has happened to anyone else. Many are shaken to the core by the cynicism of the reporters and researchers who come knocking on their door, or constantly call them on the phone, not to mention the photographers who haunt their every move. Few understand that these people are rarely responsible for what eventually appears in print or on screen. They certainly do not appreciate, in any sense of the term, that people with whom they have had no contact - sub-editors and programme editors - may literally reconstruct the version of events they had supplied.

We explain the journalistic process, and the pressures that can lead to mistakes, and let them know about others who have found themselves in a similar predicament. Our aim is to overcome the overwhelming sense of powerlessness and isolation that so many feel, and offer strategies for survival.

We also have to warn them that trying to put things right is often as traumatic as the damage done by the offending article. Piecing together the evidence to satisfy an editor or regulator that a complainant has a valid case is a painstaking affair which can take far longer than the construction of the offending item. Nor is there any system of compensation for the instant distress and longer-term damage that can flow from simple errors, and sloppy or cynical journalism. Faced with such information about fifty percent of callers decide to go no further.

Those who have approached editors directly, as PCC procedures require, often come up against the brick wall described by Neil Bennett, former Deputy Managing editor of the *Daily Mirror*, who told Clive Soley's 1992 Parliamentary Hearings: "I'm an old hand at this game. When a newspaper gets a complaint you can tell in 30 seconds flat whether it is any good. If it going to stick it goes on a long circuitous route. It is called 'kick it about until you lose it'."

Some editors display a breath-taking arrogance, challenging people with no resources to sue rather than admit an error. We have a case on at the moment where, despite the publication of an apology and payment of damages by one newspaper, the other being complained of has insisted that the case go to court. The PCC has gone along with the recalcitrant newspaper and refused to adjudicate, a decision we are challenging. After all the PCC is supposed to be a cheap alternative to lengthy and costly libel actions for which legal aid is not available.

In one of our cases an editor persisted in misspelling the complainant's name for months, despite the fact that the complaint concerned, among other things, the incorrect spelling of the name of the man's murdered son.

Such attitudes, and the apparent immunity of the industry, causes additional upset. It makes people doubt themselves, and many are fearful of even attempting to complain. Those who do may spend many days, weeks or months at considerable cost trying to put the record straight. Some of them don't even have access to a typewriter, but they are expected to meet tight deadlines and produce watertight cases if they want to be taken seriously. Editors and their lawyers however, are afforded greater latitude, since they are busy men.

It is our experience that many people traduced by the media do not want to become embroiled in the lengthy and sometimes additionally problematic process of making a complaint. The PCC requires complainants to supply hard evidence to support their contradiction of a published story. It is hard enough under normal circumstances to disprove a negative, but when that negative has

been bruited about by a national daily, potential allies go to ground, fearful of becoming infected by the calumny.

Any evidence you do supply is routinely forwarded to the newspaper concerned for comment, with no guarantees of a protected status to prevent it being used at a later date. Comments made to the PCC by complainants have been used in follow up stories. Sometimes complainants have to provide information which journalists have themselves not uncovered, or to which they have no right. If you have been described as being HIV positive or suffering from AIDS the only effective way is to supply a recent medical certificate.

In one of our cases a woman had to apply to the police for a statement that she had no criminal record in order to challenge an allegation that she did. In another a woman supplied very detailed gynaecological and other medical details to counteract an inaccurate story. To 'save her blushes' the PCC decided to regard the complaint as not having been made, leaving the offending inaccurate story 'on the record'.

And there lies another rub. If you decide not to complain for whatever good reason, the newspapers regard their cuttings files as legitimate background that can be quoted again and again with impunity. In a current case brought by a foreign journalist, the newspaper has relied upon the fact he had not filed a formal complaint about an earlier story, but merely criticised the offending paper in a rival column. It is a case of 'heads we win, tails you lose'.

One couple who were in the process of putting right inaccurate information published by one newspaper were frightened off when an rival paper repeated the allegations as part of its own follow up. Their health and their business had suffered, and they had fled their home on several occasions to avoid the press. But it was for the sake of their two young children that they decided to abandon their efforts to put the record straight. In consequence false information about them remains on the record and could resurface at any time.

And even when it is clear that inaccurate information has been published the PCC reserves the right to decide whether it constitutes an 'significant inaccuracy' (Clause 1.ii, of the Code). In general this is interpreted as meaning 'significant in the context of the article as a whole - rather than its significant in terms of the consequences for the complainant.

This is just one example of the unfair balance of power in PCC adjudications. The PCC relies upon the expertise of the editors who sit upon the Commission, and Lord Wakeham's undoubted talents as a behind the scenes 'fixer'. On several occasions the PCC has refused to criticise newspapers for identifying a minor on the ground that his parents had sold their story 12 years previously - ignoring the fact that they had been advised (by a journalist) that selling an exclusive was the only way of deflecting the attentions of other newspapers, and Lord Wakeham's own insistence that children should be allowed to complete their schooldays without fear of media intrusion.

Even if a complaint is upheld, the complainant cannot win compensation from the commercial concerns which may have wrecked their lives to increase profits and circulation. Indeed their only means of redress - publication of a PCC adjudication long after the offending article appeared - can serve to reopen old wounds, unless they are well enough informed to plead for restraint in the published wording.

Our clients are only too well aware of the attitude quoted by Lord McNally: 'When the hunt is on, a journalist who quotes the code of conduct as justification for missing out on a story will be given short shrift by his editor. And that editor, in turn, will be given short shrift by the proprietor.'

The ultimate defence of the editor is the 'public interest', even when such a defence is not merited by the PCC's definition of the term. 'Get the story and we'll dream up the public interest defence later,' is the name of the game. By which time it is too late for the person on the receiving end. An extramarital affair may be in the public interest if it conducted by a clergyman or a politician

advocating family values, but in most cases it is simply not anyone else's business other than the family members directly involved.

Our experience is that people, including and perhaps especially politicians, are petrified by what the press might do if they dare to criticise their unethical practices. That is an unhealthy situation. Conventionally the press are supposed to be 'the peoples friend' and the champion of the underdog. While it may appear that the 'red tops' press have improved their act since the death of Princess Diana, unfortunately some have merely turned their attention of smaller fry, less able and less likely to be able to challenge them.

Even before the recent PCC reforms there was plenty of evidence that journalists can be over-zealous in pursuit of a 'good story'. Basing his judgement on the definition of agent provocateurs supplied in the 1928 Royal Commission on Police Powers, one Recorder criticised entrapment by a national newspaper saying: 'I am satisfied that had it not been for their involvement the offence in this case of supplying a controlled drug would not have taken place'.

Whenever a complainant seeks redress for misbehaviour (trampling across gardens to shout abuse or press cameras against the windows of a house under siege, snatching photographs when the subject has no option but to appear in public, threatening people with worse stories unless they co-operate, offering blank cheques for confidences) the PCC invariably gives the benefit of the doubt to the press. The first line of an editor's defence is often that the complainant is the villain of the piece and should not be trusted, even when it is the veracity of the offending story that is in question.

3. Third party complaints

If the person actually named in a story is too upset or frightened to complain, why can't someone else complain on their behalf? When the issue of 'third party' complaints - from persons not actually named in the offending article - is raised, editors throw up their arms and declare it an unacceptable method of challenging press behaviour. Viscount Astor suggested that 'if every third party complaint was addressed (editors) would never do any other work'.

The PCC booklet on 'How to complain' says: 'Occasionally we may consider complaints from third parties but only where the complaint raises a significant issue which has not already been resolved. If you are complaining on behalf of someone else, please provide a signed statement from the person stating that they wish you to complain on their behalf. If this is not possible, please let us know why. You should also tell us your relationship to the person or organisation featured in the item about which you are complaining.'

This is a rather confusing rubric. For a start it is the PCC that determines the significance of the issue and from whom it is willing to entertain a complaint. It also ignores that fact that coverage of whole groups of people (gay men and lesbians, refugees, minority groups) can involve breaches of the Code. Who complains then?

The PCC has accepted third party complaints and issued warnings about derogatory coverage of the mentally ill, but refused to consider complaints from third parties about xenophobic and allegedly racist reporting (although it has issued statements warning editors to watch their coverage), but rejected complaints about the use of racially abusive language. In one case it upheld a third party complaint from a pensioners' group about offensive remarks in a comment column suggesting that pensioners are mentally ill but made no comment the complainants' objection to racially offensive remarks in the same article.

It is worth noting that one of the most successful complainants to the old Press Council was an American businessman based in the UK who was horrified by the way black people were treated by the UK press. He made over 100 third party complaints in six years, and won 75% of those adjudicated upon. Dismissed as a vexatious complainant, he nonetheless influenced a positive change in attitude at considerable risk to himself. The *Daily Mail* even went so far as to publish his address in a leader column, so annoyed were they by his persistence.

The issue at stake here is central both to the role of the press in an open democracy and the issues of freedom of expression. Newspaper companies may exist to make profits for their shareholders, but they also provide a service upon which people rely for information about the world in which they live, work and play. Any member of the public should be entitled to complain if they believe they have been misinformed by a newspaper. After all, freedom of expression is not the exclusive right of journalists.

Indeed one reason why some people complain is because they do not feel that newspapers offer a sufficiently wide variety of news and information. This is particularly true of local papers where there is little competition and an editor can choose largely to ignore local political stories which do not suit the paper's line. More to the point, an inaccurate story, like so many about refugees and Travellers, or the recent panic accounts about juvenile drug-taking in Goole (*Sunday Mirror*, 3 January), can have a dramatic impact upon people's attitude towards whole social groups and issues such as law and order. In the latter case *Private Eye* (22 January) was able to demonstrate that the story had been 'an extravagant fantasy'. Who has a right to complain in such a case?

It does harm to democracy when those privileged to represent society take liberties with our emotions and our trust by dressing up fiction as fact. That was one reason why the BBC Governors recently held a seminar with documentary film-makers to discuss whether the public could still believe what they saw on TV. The processes of the media must be open to scrutiny, especially now that the public have become aware of the lengths to which even respectable documentary film-

makers have gone to win ratings with sensational or 'staged' stories (drug smuggling in The Connection, the Daddy's Girl hoax, clever reconstructions of actuality in all manner of docu-soaps).

The same is true of the newspapers. There has been little coverage of the revelations about the construction of stories by the *News of the World* which have emerged at the industrial tribunal over the sacking of one journalist who made up an exclusive. We should all be able to complain when newspapers print lies.

Of course there can be frivolous or even vexatious complaints - and there are civilised ways of dealing with them. Some newspapers have an internal ombudsman who should be skilled enough to deflect the attentions of what is known as 'the green ink brigade'. However this role should not be merely a buffer against criticism; the job should be regarded as an important public service. As we have seen the attitudes of editors can turn a civic-minded complainant into someone easily dismissed as an obsessive. Denied the statutory right of reply that exists in so many other countries, UK citizens can only express their dissatisfaction by writing to an offending newspaper or the PCC.

Either the PCC should be more precise about which third party complaints it is prepared to entertain - bearing in mind that its Constitution, written by the newspaper industry, contains clauses giving it the absolute right not to proceed with any complaint for any reason - or it must be prepared to initiate complaint on its own volition. Only today we were contacted by a member of the public who had been carefully reading the tabloids and wanted to know what happens when there are flagrant breaches of the Code and nobody is willing to complain, especially if people have sold their story to the papers and what appears does not accord with their version of what had happened...

In a recent adjudication the PCC chose to attack PressWise, implying that we had taken it upon ourselves to act as third party complainants on behalf of two couples named in an atrocious article in the *News of the World*. The PCC justified this criticism because the dissatisfied couple who had been paid for their version of events withdrew their complaint after it became clear that they would not be eligible for the balance of the outstanding fee while a complaint was outstanding. The PCC found in favour of the newspaper even though its reporters had acknowledged that one of the most damaging quotes in the story had been made up, that others did not appear on its tape recordings and that words had been put into people's mouths. Yet that newspaper's editor, a member of the PCC, had insisted that "Every single quote, every word of it, is on tape".

4. Reform of press regulation

We all rely upon the press to keep us informed accurately and promptly about what is happening in the world around us; in part our decisions about how to vote and how to interpret the world depend upon their presentation of such matters. It is a mighty responsibility.

However most national and local newspapers and magazines in the UK are now part of vertically integrated conglomerates with interests in a wide range of sectors which have become more complex, profitable and powerful as communications technologies converge. If we were to apply the healthy scepticism that should be the hallmark of any good journalist, doubts must arise about the extent to which any newspaper company can keep its other commercial interests entirely separate from the editorial policy of its publications. The press are quick to point out the vested interests of MPs and other public figures, and should accept that similar brickbats can be thrown at them.

Offending editors, the newspapers they manage and the proprietors who own them, must be prepared to accept more than the passing opprobrium of their peers. If each breach resulted in a dent in profits, through automatic fines and/or compensation for victims, they would quickly learn the value the public place upon the integrity of information they publish.

Lord McNally said in the debate: 'I believe that the time has come to consider sanctions of a hefty fine - I mean seven figures - to deter breaches of the Code.'

It may come to that if the public are to have confidence that the print media and the Press Complaints Commission are serious about improving ethical standards.

In the meantime a first step in the right direction would be the establishment of a genuinely independent regulatory body in which the public can trust that their interests are being properly served. It would need to have transparent procedures which protect the confidences of all parties, and allow complainants to feel that they are being taken seriously. That should include the opportunity for oral hearings, especially in complex cases. We have found the BSC's well-ordered oral hearings helpful, fair and revealing. They give the complainant an opportunity to confront their accusers in a controlled situation, and allow independent assessors a chance to judge the trustworthiness of both parties.

The regulatory system must make it clear how third party complaints will be dealt with, rather than leaving them in the current limbo - entirely at the whim of the regulator.

Such reforms need to be mirrored by changes in attitude among the newspapers themselves. A greater willingness to deal with criticism promptly and fairly. Media lawyers currently advise their clients that reporters should never acknowledge errors for fear of incurring a liability if the matter is taken further. This may make sound business sense but it makes a nonsense of customer relations let alone freedom of expression.

The Guardian has demonstrated a mature and simple method of dealing with complaints in its discreet Corrections and Comments column which has become required and reassuring reading. The excellent weekly commentaries of its Reader's Editor add to media literacy rather than impeding press freedom. They are a model that other publications would do well to emulate, but serious breaches of the Code should still merit prompt and prominent corrections.

That would leave the regulator to deal with the 'hard cases', which may even require tribunal style hearings. Complainants should at the very least have their legitimate expenses covered (they get nothing at present even if it has taken months of costly negotiation to put things right).

If a newspaper has boosted its circulation and advertising revenue with a fallacious story or one that breaches the Code, it should be prepared to make amends from its profits. That is only fair.

We appreciate that the issue of compensation immediately raises concerns about 'gold-digging' complaints, and the use of expensive lawyers. But newspaper use expensive lawyers all the time to protect their interests, while most complainants cannot afford to hire the services of a high street solicitor.

In our view the quid pro quo for accepting a more rigorous regulatory system would be the opportunity to do away with the libel laws entirely. That would remove a heavy burden from the newspaper industry, while the public would have the benefit of a regulatory system with teeth and the ultimate protection of the Human Rights Act for serious breaches of privacy.

Digitisation and the convergence of communications technology (and the expansion of cross media ownership) also opens fresh avenues for a new approach to media regulation This is being debated in Europe and is under scrutiny by the Department of Trade and Industry and the Department of Culture, Media & Sport.

In submissions to both we have offered suggestions about a new two-tier systems - one dealing with harmonised delivery, technical standards and ownership provisions which might be best suited to plans for trans-European regulation, and another, national body concerned with content. Since the multi-skilled journalist is now required to produce material for more than one medium (print, electronic, radio, and TV) it is ludicrous that different standards should apply.

Now that the Human Rights Act is in place, and new legislation on Data Protection and Freedom of Information is imminent, we at last have an opportunity for the thorough overhaul of regulation that is much needed.

Appendix: PressWise statement re the Mary Bell case

PressWise abhors the hypocritical media circus that has encircled the family of Mary Bell and the family of the children she killed as a child, since publication by Macmillan and serialisation by *The Times* of Gitta Sereny's *Cries Unheard*.

It is important for society to learn more about the motivation for such dreadful events as the killing of children by children, and it was inevitable and appropriate that a serious book such as *Cries Unheard* would be written. However it is neither necessary nor in the public interest for the current identity and whereabouts of Mary Bell or her own child to be made public, whether or not court injunctions exist to protect them.

There is a distinct danger that, as happened after the release of the paedophile Sidney Cooke, the press are helping to whip up a public frenzy almost to the point of mob law.

The press have undermined their standing as guardians of the public interest, by generating anxiety and hysteria just to boost sales. The current media furore has more to do with circulation battles than protecting the public interest. Two Murdoch-owned titles have sought to protect the commercial interests of their proprietor by claiming the moral high ground; *The Times* by paying £75,000 for the serialisation rights, *The Sun* by seeking to expose the new identity of the book's subject. The subsequent controversy has guaranteed commercial success for publishers Macmillan.

Meanwhile Ms Bell and her child have become fugitives for committing no offence; the family of her victims have again been forced to relive their tragedy in the glare of publicity; and the efforts of a serious journalist to improve public understanding have been traduced.

And once again the Press Complaints Commission, which is paid by the industry to protect it against statutory controls, has washed its hands of the affair. By refusing to consider 'third party complaints' the PCC can avoid the embarrassment of ruling about breaches of the new 'post Diana' Clauses 3 (Privacy), 4 (Harassment), 5 (Intrusion into grief or shock), 6 (Children), 10 (Innocent relatives and friends), 12 (Victims of sexual assault) and 16.ii (Payment for articles).

Both Ms Sereny and Ms Bell may regret the financial transaction they reached over the book they worked on together, but the nature and size of that deal is not really the central issue.

By generating knee-jerk responses to highly emotive issues the press not only undermine their own credibility as genuine protectors of the public interest, they risk generating simplistic and dangerously inappropriate responses from politicians and the public to complex issues that require rational consideration and measured resolution.