

# Stop the Rot!

Submission from The PressWise Trust  
to the Culture, Media & Sport Select Committee Inquiry  
into Privacy and Media Intrusion

Prepared by Mike Jempson  
Director, The PressWise Trust  
February 2003

## **Contents**

- Summary and conclusions
- 1. The PressWise Trust
- 2. Privacy and media intrusion
- 3. What happens when you make a complaint?
- 4. Codes of Conduct
- 5. The Human Rights Act
  - Human Rights Commission
- 6. Reforming media regulation
  - A hotline via the regulator
  - Third-party complaints
  - Oral hearings
  - Corrections
  - Compensation
  - Media Ombudsman
- 7. Do we need new privacy legislation?
- Footnotes

## **Summary and conclusions**

### **The PressWise Trust**

- The media ethics charity PressWise was set up by 'victims of media abuse' in 1993.
- The Trust is concerned with ethical issues in all forms of mass media, and provides free, professional advice for complainants.
- PressWise also devises and delivers training for media professionals and the voluntary sector in the UK and internationally.

### **Privacy and Media Intrusion**

- PressWise welcomes this inquiry into privacy and media intrusion.
- The media industries have a pervasive influence on people's lives and public discourse, but as they grow and ownership transfers to trans-national conglomerates and competition increases they become less accountable to listeners, readers and viewers.
- In a highly competitive market media invasion of privacy has become intractable and inexorable.
- It is a moot point whether public expectations of journalism have been driven down by market forces or whether public appetites have been sharpened by the growth of a 'confessional culture', typified by 'reality TV' over the last ten years.
- It is incontrovertible that many individuals, with little knowledge of media processes and who get caught in the spotlight, suffer harm and have inadequate remedies in law or via the regulatory systems.
- What is at issue is public confidence in journalists to inform them accurately about current events and to defend their rights against abuses of power, rather than to abuse their trust by colluding in cynical marketing ploys that put profits ahead of human values.

### **Establish a Human Rights Commission**

- The Human Rights Act can only be an effective champion of citizens' rights if it is supplemented by the creation of a Human Rights Commission as a guarantor for the public that serious abuses of power by public authorities and the media can be investigated swiftly and dispassionately and at little cost to the individual.

### **Consult Journalists and the Public on Codes of Practice**

- Codes and guidelines for media professionals should be reviewed regularly, explained and made public.
- Reviews should take into account the views of working journalists and the expectations of the general public.
- Media literacy would be much improved if there were some form of media-wide public consultation about the codes, and more opportunities for the public and media professionals to discuss their concerns about media practices, regulation and the law.

### **Reform Regulation of the Print and Broadcast Media**

- Similar standards of conduct and regulation should apply to the print, broadcast and online media, to the ultimate benefit of the public and media professionals, given technological convergence, increased opportunities for concentration of cross-media ownership, and multi-skilling.
- The Press Board of Finance should levy a goodwill bond from publishers and encourage the Press Complaints Commission to offer a sliding scale of compensation to those who suffer as a result of breaches of the industry Code.
- Through its Content Board, OfCom should operate an open system of investigation and adjudication of complaints about electronic media, including oral hearings, and an appeal process open to all parties where the decisions of the Press Complaints Commission are at issue.

- Alternatively the office of Media Ombudsman should be created to act as a final arbiter when there is dissatisfaction on either side with the outcome of press self-regulation or light-touch regulation of broadcast content.
- The Media Ombudsman should also be empowered to defend press freedom, and to conduct research into public attitudes towards media standards.

**Consult the Public and Media before defining Privacy in Law**

- A privacy law directed specifically against the media is inimical to press freedom.
- Print and broadcast journalists and executives may find it helpful if there were a privacy law which defined more precisely what protection the individual can expect from unwarranted intrusion by any public authority or commercial institution.
- Such legislation must allow for a public interest defence, and should be drafted only after wide public consultation.

Louis Blom-Cooper  
Chair of Trustees

Mike Jempson  
Director  
Bristol, February 2003

## **1. The PressWise Trust**

### **1.01 PressWise exists to**

- provide free, confidential advice and assistance for members of the public affected by inaccurate, intrusive, or sensational media coverage;
- deliver use-of-the-media training for the voluntary sector and members of the public;
- devise and deliver training on ethical issues for media professionals;
- conduct research and publish material about media law, policy and practice;
- contribute to public debate about the role and impact of the mass media.

1.02 PressWise was set up as a voluntary organisation in 1993 by 'victims of media abuse', supported by concerned journalists, media lawyers and Clive Soley MP, who had sought to establish an independent body to defend press freedom and adjudicate on complaints against the press with his Freedom and Responsibility of the Press. PressWise however is concerned with ethical issues in all forms of mass media. On average the Trust receives two enquiries from potential complainants and journalists each day, and a similar number of approaches from journalism and media students or academics.

1.03 The PressWise Trust registered as a charity in 1999, and is funded by donations, grants and commissions. The Trust's registered objectives can be viewed at <http://www.presswise.org.uk/about>

1.04 The Trustees and patrons include respected journalists, academics and members of the public who have experience of the media. The Trust is currently chaired by Sir Louis Blom-Cooper QC, the last Chairman of the Press Council before it was replaced by the Press Complaints Commission (PCC) in 1991.

1.05 PressWise has a national office in Bristol. Currently it has two full-time and six part-time staff. The Trust's full-time Director and two part-time Associate Directors are very experienced journalists and trainers who have worked in all sectors of the media. The Trust also employs a network of journalists to conduct research and deliver training.

1.06 PressWise has devised and delivered a wide range of training packages for media professionals and non-governmental organisations in over 20 countries. As part of this work the Trust has developed guidelines on a variety of problematic aspects of media coverage, including:

- Health communications (with WHO European Health Communication Network);
- Reporting about children (with the EC Daphne Initiative, the International Federation of Journalists and UNICEF);
- Reporting Suicide (with Befrienders International, the IFJ and the NUJ).

1.07 PressWise regularly contributes to public debate via the media and events concerned with media ethics and regulation. It also organises opportunities for dialogue between media professionals and the public in the UK. These have included:

- Reporting Suicide (London, 2001);
- Refugees, Asylum-seekers and the Media (London, 2001);
- Access to the Information Society (Bristol, 1998);
- Ethnic Minorities and the Media (London, 1997);
- Child Exploitation and the Media (London, 1997).

1.08 PressWise believes that press freedom is a responsibility exercised by journalists and editors on behalf of the public. The most important role of journalists in a democracy is to inform the public about events, issues and opinions which might influence the decisions people take about their lives and the society in which they live. For that reason the Trust asserts the public's right to know when inaccurate information has been delivered by the mass media.

1.09 Details about the full range of the Trust's activities can be obtained on its website:  
<http://www.presswise.org.uk/>

## **2. Privacy and media intrusion**

2.01 PressWise came into existence at around the time the then National Heritage Select Committee last investigated issues of privacy and media intrusion. We have since given evidence about chequebook journalism and payments to witnesses. In this submission we have drawn upon our experience of providing independent advice to complainants about media malpractices, occasionally acting as advocate in cases before the Press Complaints Commission and the Broadcasting Standards Commission.

2.02 We are well placed to observe and comment about the behaviour of the print and broadcast media and the effectiveness of regulation, especially as both the Director and the Deputy Director are experienced journalists, and since 1999 The PressWise Trust has been chaired by Sir Louis Blom-Cooper, the last person to chair the Press Council.

2.03 What follows is commentary on the issues before the Committee, based on our experience, and backed up by examples drawn largely from our files. These are appended separately and are not for publication, in order to protect those whose privacy has already been intruded upon. We have no desire to risk their further exposure to publicity, especially as we are aware that when individuals stand up for their rights some sections of the press have a habit of turning on them.

2.04 Every time there is a new hiatus about the alleged misbehaviour by the print or broadcast media, the question always asked (mostly by commentators following the story) is 'Yes, but are things getting better?' It is only fair to point out that most of the time, most of the print and broadcast media do not intrude unnecessarily into the private lives of ordinary citizens. Some do unwittingly and will usually apologise. But in general the answer has to be that the issue of privacy and media intrusion is an intractable and inexorable process.

2.05 Once upon a time, the mere publication of the fact that a member of high society was suing for divorce over the alleged adultery of a spouse, would raise eyebrows, and excite calls for 'something to be done'. Nowadays, newspapers trumpet the cause of (press) freedom to be allowed to publish the intimate details of what happened in bed when a minor sporting celebrity is discovered to be 'playing away from home'.

2.06 Meanwhile professional PR companies and con merchants hawk false stories around the newspapers to see who will pay most for their fictions, and investigative journalists set up elaborate scams to trap people into revealing their weaknesses.

2.07 It is as if the media industries have convinced themselves either that the public is 'in' on the masquerade that the news agenda is, literally, made-up titillating nuggets of 'infotainment', or that attracting consumers for its products is justification enough for publication. Or both.

2.08 Standards of propriety, like communications technology, may change, but even in the digital age, the seductive charm of the production process remains constant. When a 'good story' lands on the news desk the adrenalin flows: Do we have it as an exclusive? What are the opposition up to? What more do we need to sharpen the angle? etc., etc. The nationals may then commission local news agencies, or private detectives, to see what they can turn up by way of added 'colour'. Final decisions may not be taken until all the information is in, unless there are signs that a rival is onto the same story, but by then the nature of the story has become fixed in everyone's head, and much of the damage to the subject has already been done.

2.09 It is both sad and strange that an industry which prides itself on protecting the individual from oppressive behaviour by others should set such store by going through people's rubbish bins for titbits, and hanging out anybody's dirty washing if it will get some attention. Of course people will buy it, we are all curious. Perhaps it is time to qualify the old saw 'there's nowt so queer as folk...unless it's media folk'.

2.10 Media executives have created a market for salacious and intrusive stories and pictures, then 'blame' the public appetite for gossip as if that in some way justifies unethical behaviour by the media.

2.11 We may all listen to gossips and snoops but it does not mean we hold them in high esteem. Small wonder that journalism now attracts those willing to pander to others' worst instincts. That may not be a virtue - the question we must return to later, is whether it should be a crime.

2.12 A person's right to freedom of expression ends when it begins to intrude upon another's human and civil rights. That is also where a person's privacy could be said to end. Just because a private life might excite prurient interest does not make it automatically newsworthy.

2.13 Prime-time and late night TV regale us with ever weirder programmes based upon the private lives and the sexual predilections of 'ordinary people', dressed up as 'reality-TV', 'serious documentaries', video diaries or quiz shows. Way past the watershed though some of them may be, and topped and tailed with appropriate warnings for the squeamish, they all contribute to legitimising the voyeurs approach to human relationships. And if it is okay on TV, then why not in the tabloids?

2.14 All citizens - including celebrities and public figures - are entitled to a private life free from intrusion - unless they specifically invite media attention to their private life or can be shown to be engaged in corruption, law-breaking, abuse of power, or significant hypocrisy, or if their behaviour might be considered a risk in some way to the health and safety of others.

2.15 Consider the personal life of an actor or a rock star or a politician. If they choose to promote their celebrity by revealing intimate details of their personal lives, or by attempting to demonstrate their trustworthiness by claiming an unblemished private life, they are in a far weaker position to defend themselves when a few unsavoury details reach the public domain.

2.16 However, the mere admission to being gay, or married, or to having suffered a miscarriage, a sexually transmitted disease, or a messy divorce does not automatically justify a media 'exposure' of other intimate details of your personal life. Providing a celebrity is not creating a fiction, s/he is perfectly entitled to protect those closest to them by drawing a veil around certain areas of their personal lives.

2.17 The biggest problem with today's mass media is that its agenda extends beyond the genuinely newsworthy to that which is simply entertaining and intriguing - or to put it more accurately - the media's agenda now includes anything which might prove financially beneficial to the publisher.

2.18 What has developed is a culture that puts a price on all forms of information. It encourages citizens to believe that any knowledge they may have about anyone could be worth some money. It does not have even the dubious virtue of an ideological framework. Popular tabloids regularly indicate that they are willing to pay for information. 'Reality' TV shows seek to convince potential participants that it is 'worth their while' to take part because they might become minor celebrities and so can earn temporary wealth by jumping on the bandwagon and allowing their most intimate secrets to enter the public arena.

2.19 The media is quick to protest that some celebrities are simply 'famous for being famous' but it is the media which has generated an environment in which that has become possible. 'Reality TV' shows from *Big Brother* to *Wife Swap* encourage people to disport themselves on screen, and the print media then stokes the fires of fame. Yet no self-respecting TV producer or journalist would ever countenance allowing the cameras to record their personal lives.

2.20 In short the 'Andy Warhol' syndrome - that everyone is entitled to 15 minutes of fame - has constructed a culture on which the media feed, destroying conventional notions of what is private. The availability of 'willing victims' - a few of whom admittedly make a lot of money from the 'celebrity' constructed for them by the mass media - allows for plenty of variety. The media treat them as 'fair game' and all forms of intrusive coverage then become permissible.

2.21 Having helped to create celebrities, popular newspapers then delight in 'bringing them down' by detailing their social and sexual behaviour. Anyone who attempts to retaliate is likely to come off worse.

2.22 Gossip and rumour now command a price whether or not they contain a kernel of truth. If someone is prepared to 'say it', it appears to be worth publishing.

2.23 Unlike the neighbourhood gossip, The opportunities open to journalists working in today's mass media to intrude upon another's right to privacy is magnified not only by virtue of access to near instant access to much wider audience than someone's neighbours, workmates and casual acquaintances in the pub or club, but also because of the resources at their disposal. They can employ techniques and technologies that will allow access to a person's business interests, credit ratings, bank accounts, police records, and telephone calls.

2.24 Telephoto lenses and bugging devices allow them to record people's movements and meetings at will. They may even have budgets to commission private investigators and freelance photographers, and to encourage their target's acquaintances and friends to divulge intimate personal details.

2.25 The media appropriate people's lives. It may seem reasonable to insist that 'if you live by the media, you must die by the media' but such a cynical attitude begs many questions, not least that when those upon whom the media spotlight is suddenly turned have simply been caught up in events over which they have little control.

2.26 Invasions of privacy have become so routine that some sections of the press no longer seem to appreciate what they are doing. Hopefully they will remain vigilant and express concern when similar techniques are used by the police and security services on 'fishing expeditions' against individual citizens. However there is always a risk that an 'anything goes' attitude will blunt the sensibilities of journalists and public alike. If we object to the abuse of power by agencies of the state, we should be equally reticent to tolerate similar behaviour by commercial (media) companies.

2.27 If information cannot be elicited through the 'normal channels' of discreet enquiries and the willingness of individuals to supply information freely, few would object to skilled cajoling and a reasonable level of persistence conducted in a professional manner. When it becomes accepted that the currency of communication is cash, or that 'dishing the dirt' to strangers is an acceptable aspect of human relationships, questions need to be asked about what journalism is for.

2.28 Journalism is not supposed to be an easy job; it requires skill, patience, curiosity and a willingness to persevere when obstacles are placed in the way. But the credibility of those who seek to expose corruption and venality is undermined when dubious methods are employed. There may be occasions when unacceptable levels of subterfuge have to be employed, but for trust to be maintained between journalists and the public these should be acknowledged as exceptions rather than the rule. The ends do not always justify the means.

2.29 Often such people will complain that their picture has been taken, or 'snatched', without their consent sometimes at the door of their home. Taking photographs from the public highway onto which the doors and windows of ordinary people's homes open, or at shopping centres, or in

other public places is considered acceptable, even when the lens is trained on people who have not courted publicity.

2.30 The PCC's advice appears to be that people should not put themselves in a position where they might be photographed. Yet it guarantees privacy to those who can afford houses far enough from the public highway or guarded by security systems that only the most powerful telephoto lenses can penetrate.

2.31 Some people have become unwitting victims of their own willingness to supply the media with information, especially about domestic tragedies. It is commonly held view within the trade recipients of 'the death knock' - when reporters go to the homes of relatives of deceased people to express condolence and look for information and images - welcome the opportunity to talk to the press. Often people are obliging, if rather stunned, to find themselves receiving such attention. Usually requests to be left alone are respected. But there are occasions when the consequences of welcoming the media are unforeseen.

2.32 For instance, who controls the use of pictures supplied to the press and copied for reproduction purposes? Copyright of the original remains with the person who took the pictures. But, especially in the digital age, such images are instantly accessible for uses other than those for which they were supplied, and this can lead to unwarranted intrusion at a later date.

2.33 In the final analysis it would appear that the media is free to determine the extent to which any person might be considered to enjoy privacy. If it is in the media's interest to place a person's life under the scrutiny of the public gaze, it will find a way of justifying exposure by calling in aid 'the public interest', with particular reference to public attitudes generated in large parts by the media itself.

2.34 One area of special concern is that of children's privacy. Although the industry Code has been tightened since the death of Princess Diana, and UK law has been modified to bring it more in line with the letter and spirit of the UN Convention on the Rights of the Child (to which Britain is a signatory), literally every week newspapers challenge the right of courts to prevent publication of the identities of children caught up in crime. (1) They regard such restrictions as an assault on press freedom, apparently convinced that exposing a young person to publicity is a legitimate form of additional punishment, and ignoring conventional wisdom that young children need to be able to learn from their mistakes and punishment if they are to become useful members of society.

2.35 The media justifies its fascination with child offenders on 'public interest' grounds, although some might argue that the public interest would be better served by a story indicating, for instance, that 'an eleven year old boy from X-town has been placed in care after he admitted to 80 burglaries in the Y-ville over the last two years', rather than by identifying him and thus granting him a notoriety which may be hard to shake off. Some past efforts by the media to circumvent rules about identifying young offenders have taken bizarre forms sometimes with tragic consequences.

2.36 At the time of the murder of James Bulger there was a near riot when *The Sun* reported the arrest of a 12-year-old boy, incorrectly fuelling suspicion that he was the murderer. The understandable shock and incomprehension that people felt about the killing made the risk of vigilante action against the actual murderers high. They have replaced Myra Hindley as popular hate figures and, like an earlier child killer 'Mary Bell', will forever require the protection of assumed identities. Sections of the media remain unhappy that the courts have insisted on this. It is doubtful that the recently released pair will ever forget their crime, and some newspapers are determined that they won't be forgotten. Some may consider that hounding them until their identities are revealed is 'in the public interest', but pandering to mob rule is the ultimate risk of having no respect for the privacy rights even of those we despise.

### **3. What happens when you make a complaint?**

3.01 The first port of call for anyone with a complaint about a newspaper is supposed to be the paper itself. This can be a daunting task, especially for someone who is distressed and feeling helpless and alone. Some have described it as 'talking to the enemy', especially when they meet blank incomprehension or rudeness when they call the switchboard.

3.02 Only those who are dissatisfied with the response are supposed to contact the Press Complaints Commission. Those who make use of the PCC website will have noticed a significant improvement in the way it explains its methods of dealing with public enquiries. Problems remain however.

3.03 The precise methodology for investigating complaints remains relatively superficial. Complainants are expected to couch their complaint in a way which demonstrates their familiarity with the Code. The publication has an opportunity to respond, which the complainant sees and may reply to if still dissatisfied.

3.04 The Commission 'adjudicates' if the matter is still not resolved after the publication's second response. It is suspected (the public are not told how the process actually works) that PCC staff formulate a decision which is laid before Commissioners, who may modify it. Editors are present to offer their 'professional advice' and every effort is made to ensure that a unanimous verdict is reached. Complainant and publication must make do with the outcome of the process. Normally there is no opportunity for appeal against the decision.

3.05 Most complaints are 'resolved' without adjudication, but no independent assessment has ever been conducted to determine satisfaction levels among complainants.

3.06 According to analysis conducted by Chris Frost, Head of Journalism at John Moore's University, Liverpool, in the first decade of the PCC's existence just under 23,000 complaints were received, between January 1991 and December 2000. Fewer than 4% of them went to the Commission for adjudication, and on average 1.6% were upheld. (2)

3.07 In the last full year for which figures are available (2001) 3,033 complaints were received (a 36% increase on the previous year), 90% of them 'from ordinary people temporarily caught in the spotlight of media attention'. Only 1.3% of all complaints went to the commission for adjudication, and only 0.6% were upheld. (3) From these statistics we are supposed to deduce that press standards have improved.

3.08 Yet *The Guardian*, which employs its own Readers' Editor and runs a daily corrections column, currently receives some 7,000 complaints in a year. Are we supposed to believe that one national newspaper with a circulation of around 500,000 a day is twice as negligent of the industry Code than all the national, regional and local newspapers and magazines put together?

3.09 While it is true that complaints about inaccuracy far outweigh those about intrusion of privacy, inaccuracies can cause far-reaching damage to the private lives of those affected.

3.10 Even so the PCC makes liberal use of the 'get-out' provided in Clause 1(ii) of the industry Code which requires corrections and apologies only when 'a significant inaccuracy' has been published. Editors and the PCC determine how 'significance' is to be defined - not the complainant. The justification for rejection is couched in terms of 'significance within the story as a whole' - ignoring completely the actual significance for the person who has been traduced.

3.11 And to add insult to injury the PCC sometimes breaches the privacy of complainants by requiring the disclosure of information that journalists have not been able to uncover or to which they have no right.

3.12 The PCC offers no guarantee of confidentiality since all material divulged in the course of a complaint is supposed to be available to both sides for comment. This deters many people from pursuing complaints for fear that they might have to reveal intimate personal details or material that might be the subject of later legal action in order to 'disprove a negative'. PressWise has argued successfully against this practice on several occasions, but that is an exception rather than the rule.

3.13 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 have their own strategy for dealing with unwelcome approaches.

3.14 It is rare for the PCC to accept the word of a complainant against that of an editor, who would not have been present at the incident, when allegations of harassment are made.

3.15 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.

3.16 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?

3.17 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 person they wish to approach is the editor of the publication they feel has done them harm. 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.

3.18 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. 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. It would be more helpful if the PCC were less arbitrary about time limits.

3.19 A successful complainant may get the satisfaction of a printed correction and/or apology, occasionally a personal letter from the editor, or if the complaint goes for adjudication and is upheld the offending newspaper must publish the PCC ruling. That is it. There is no other form of redress, whatever damage the offending article may have caused.

3.20 Complainants about radio or TV programmes are expected similarly to approach the offending broadcaster first. This can be a complex matter, since some programmes are live and others pre-recorded and may not have been produced 'in-house' or at the nearest broadcasting station. However, broadcasters have a system of recording comments about programmes on a log which is circulated to programme makers. A dissatisfied complainant must then decide to which of the broadcasting regulators they should then take their grievance.

3.21 Most will be referred to the Broadcasting Standards Commission, whose procedures follow a similar pattern to the initial stages of a complaint to the PCC. Complainants explain their case in writing; the programme-makers respond; if a further exchange of letters and evidence does not resolve the matter the BSC is likely to hold an oral hearing.

3.22 No new matter is supposed to be brought into the informal tribunal-style hearing, but each party may read an opening and closing statement into the record and question the opposing side. Commission members may put their own questions to either party. It can take up to six weeks for the result of the Commission's deliberations to be made known after the hearing.

3.23 The process puts the programme-makers to an immense amount of trouble in assembling their defence, which makes the system unpopular among broadcasters, but it is a reminder of the value of keeping a paper-trail of the production process.

3.24 The broadcasters are obliged to publicise a finding in favour of the complainant, by broadcasting the outcome and paying for it to appear in a publication of the complainant's choice.

3.25 The special value of this procedure is that it allows the complainant an opportunity to unburden themselves, however nervously, in front of those who are alleged to have caused them harm. The process involves an evident cost to the broadcaster and demonstrates that each party will receive a fair hearing.

3.26 It is as yet unclear how OfCom will organise its complaints procedures under the new lighter-touch regime, but it is to be hoped that a similar, simple but effective method of dealing with complaints will be replicated.

3.27 Each system, however, relies upon an understanding among both parties to a complaint, about the Codes against which media behaviour is to be judged. For most members of the public this will be the first time they have come into contact with the codes. Few know much about their provenance, or realise how open they are to interpretation.

3.28 It is vital the media industries and related bodies engage in dialogue and the development of media literacy as part of the new regulatory framework, the terms of reference cannot be known until the Communications Bill has reached the Statute Book.

3.29 The precise nature of the structure and procedures of OfCom have yet to be decided. It is to be hoped that OfCom will adopt the user-friendly procedures employed by the Broadcasting Standards Commission, with opportunities for 'hearings in person' where adjudication is problematic.

#### **4. Codes of Conduct**

4.01 In the UK media journalists have a wide variety of codes with which they are expected to comply. The largest journalists' organisation, the National Union of Journalists has a code originally devised in 1936. The Chartered Institute of Journalists' Code goes back further still. And the British Association of Journalists has yet another. The NUJ code is supervised by an Ethics Council which provides an advice hotline.

4.02 The newspaper industry Code, policed by the PCC, has been devised by senior management. It is supposed to be written into the contracts of all Editors, who are responsible for making sure that staff and agencies supplying a publication abide by them.

4.03 In radio and television companies are required as part of its licence to develop guidelines that echo the regulatory codes laid down by the ITC or the Radio Authority and the Broadcasting Standards Council. Because broadcasting regulation is on a statutory footing, failure to comply with licence conditions can result in fines or even loss of a licence, although the most user-friendly regulator, the BSC, may only require publication of corrections and apologies.

4.04 The BBC has similar obligations under its Charter and its Producers Guidelines are the most comprehensive of all. The BBC has its own internal methods for handling complaints which do not include the power to fine producers or compensate complainants. At present the BSC effectively acts as a 'court of appeal' for those not satisfied with the BBC's in-house procedures.

4.05 It is significant that the broadcast media is widely regarded by the public as a more reliable medium than the press. It is regulated by largely independent bodies, funded jointly by the state and the industry, and has the benefit of statute and powers to fine for misconduct.

4.06 Meanwhile many special interest groups whose constituents have been adversely affected by poor quality media coverage have developed their own guidelines for journalists (ethnic minority, disability, gay and lesbian, and mental health organisations, for instance). These are often very helpful but have little bearing on journalistic practice unless and until they are incorporated within codes devised by media professionals themselves, who are understandably suspicious of any attempt to influence their behaviour from external groups with their own agendas.

4.07 Voluntary codes of conduct can only provide guidance to inform the sensibilities of the individual journalist. Policies devised through boardroom or newsroom discussion determine practice. It is important that the codes on which practice are based are not set in stone but are regularly reviewed to meet new circumstances and changes in social attitudes. However they do need to be explained and made public. Were this to be done through some form of media-wide public consultation there would perhaps be greater understanding of what is expected of journalists.

4.08 There are two major problems about voluntary codes. Firstly they are useless unless journalists are familiar with them - and many are not. More importantly they are unlikely to 'stick' unless some form of sanction is attached when a breach occurs. This need not be an argument for statutory enforcement, although it does explain the limits of their effectiveness. Thus far no editor has been dismissed for breaching the newspaper industry Code of Practice - indeed several have been promoted or poached by rival companies after well-publicised incidents where their judgement has been called into question.

4.09 It has been mooted that the industry Code should also be included in journalists contracts but, since they have had no say over its construction and are not represented on the PCC, that would seem inappropriate as things stand.

4.10 The existing publishing industry Code is primarily concerned with protecting publications from legislation and legal liability, but that hardly explains why it does not include a 'conscience clause' to allow journalists to refuse to undertake unethical assignments.

4.11 As it stands journalists have no protection if they refuse an assignment on the grounds that it conflicts with the industry's code, let alone the NUJ Code of Conduct which members have been expected to abide by since 1936. Indeed some newspapers and magazine still refuse to recognise the NUJ at all, and most have long been hostile to its Code of Conduct.

4.12 PressWise would maintain that reporters, with no financial incentives at stake, often have a higher regard for ethical behaviour than their employers. The inclusion of a conscience clause would enable them to protect personal privacy at the sharp end of journalism.

4.13 Certainly in today's communications environment with 'multi-skilling' and cross media ownership it would make sense if there were to be a common Code of Conduct across all media, in the devising of which media worker's representative organisations and members of the public should play a part. Such a Code should contain a 'conscience clause' acknowledging the individual's right to refuse to operate unethically.

4.14 The Swedish Press Council, which regulates all forms of mass communications, supervises a code of conduct devised by all parties across all media. In a section on the integrity of the journalists it contains the warning: 'Bear in mind the provision in the Collective Agreement for Journalists according to which a journalist can not be ordered to write against his/her conviction or to carry out humiliating assignments.'

4.15 For the time being it would be evidence of good faith if the Content Board of OfCom and the PressBof Code of Practice Committee opened its doors to include at least one representative of the main media workers unions and a representative of consumer opinion.

4.16 Among the issues both the PressBof Code Committee and the OfCom Content Code Committee should seek to address are:

- advice on terms of reference for the pooling of information to avoid the recurrent problem of 'media scrums' especially outside people's houses;
- making editors aware of the precise responsibilities they must agree to accept for the circumstances under which information and images are obtained (both from independent news and picture agencies and from non-press agencies like private detectives, for example) before agreeing to publish and pay for them;
- the need for sensitive coverage of suicide;
- the need for protection of plaintiffs in industrial tribunals where allegations of racial or sexual abuse from a part; and
- the importance of correcting or 'tagging' information held on electronic databases where evidence of inaccuracies has been produced or when adjudications have called into question the validity of reusing the material.

## **5. The Human Rights Act**

5.01 PressWise lobbied for full incorporation of the European Convention on Human Rights (ECHR) into UK law, in large part because it established at long last that individuals have rights against the abuse of power by public authorities. The UK played a leading role in devising the ECHR, promulgated in 1950 by the Council of Europe as part of the reconstruction of Europe after the Second World War, to offer citizens a guarantee against totalitarianism in post-war Europe. The ECHR came into force in 1953 - by which time it had been incorporated into law by 31 of the 36 signatory states, but not by the UK.

5.02 The same year saw the creation of the General Council of the Press (later the Press Council) in belated response to the recommendations of the 1947 Royal Commission on the Press. The industry's failure to take up the challenge of self-regulation had itself given rise to the Defamation Act of 1952, a draconian measure constructed around righteous indignation that the press in particular lacked self-restraint and any regard for the consequences of publishing intimate or scurrilous information about private matters. At the heart of the criticism of the press, then as now, was the fear of abuse of its undoubted power.

5.03 It might have been expected that incorporation of the ECHR would have been welcomed by everyone as a signal of democratic maturity. Until the Human Rights Act (HRA) came into effect in 2000, British 'subjects' lagged behind the citizenry of Europe. Behaviour in the UK which might have been considered to breach the Convention had first to be tested against a range of domestic laws before the plaintiff could appeal to Strasbourg for an adjudication under the ECHR. Since incorporation, all laws in Britain must be tested against the provisions of the Human Rights Act to ensure that everyone enjoys the human rights it encodes.

5.04 Journalists in particular, concerned as they are to defend and extend citizens rights, ought to have been in the vanguard of those who appreciated the value of the HRA. It was, after all, the European Court on Human Rights that upheld journalist Bill Goodwin's right to protect his source after he had been fined £5,000 under the Contempt of Court Act 1981 for refusing to identify his informant about a company's financial affairs for a story he was never allowed to publish.

5.06 Under the terms of Article 8 of the ECHR, breaches of a person's private and family life, home and correspondence, are legitimate only if they occur in accordance with the law of the land and if considered necessary in the interests of public security, public safety, the economic well-being of the country, the prevention of crime, the protection of public health and morals, or the protection of the rights of others.

5.07 Similarly, under Article 10, the right to hold and express opinions and otherwise communicate information is circumscribed only where national security, territorial integrity, public safety, public health or morals, the reputations, rights or confidences of others, or the integrity and impartiality of the judiciary are at risk.

5.06 Together these articles offer a reasonable and comprehensive expression of the concept of 'the public interest', and mirror the obligations set out in the statutory regulations governing broadcasting. Precise definitions might have to wait for courtroom debate, but that is always going to be the case with new laws, and besides, as the then Home Secretary Jack Straw told the Commons on 16 February 1998, all past evidence shows that the European Court of Human Rights in Strasbourg has used Article 10 of the Convention "to buttress and uphold the freedom of the press against efforts by the State to restrict it."

5.07 Journalists like to see themselves as autonomous individuals, and would be the first to insist that they should have the right to live without let or hindrance from anyone, unless their behaviour impinges upon the rights of others to do likewise. Normal rules do not appear to apply, however when the chase is on for stories, the news desk is breathing down your neck, and the industry takes against a new law.

5.08 Almost as a body the press, who promote themselves as champions of the public interest in the constant struggle between individual rights and the power of the state and commercial organisations, took umbrage against the Human Rights Act. Some sections of the industry deride the HRA as a 'villain's charter', simply because it might occasionally give rise to decisions under Article 8 which would challenge a newspaper's commercial interest in boosting sales and profits by publishing (intrusive and often inaccurate) stories which may interest the public but are unlikely to pass the 'public interest' test.

5.09 During passage of the Human Rights Bill, the erstwhile chairman of the Press Complaints Commission, which had shrugged off the campaigning role of the old Press Council, took up cudgels on behalf of the industry which funds it and sought to represent the HRA as a threat to press freedom.

5.10 He argued, as did the leader columns, that people who are corrupt, criminal or hypocritical would be able to hide behind Article 8 and prevent publication of their misdemeanours. The rich, powerful and corrupt, (like the late Robert Maxwell, a newspaper baron), have always had the means of protecting themselves by exploiting restrictive measures such as the libel laws.

5.11 The industry was further exercised by the possibility that if a publication fell foul of a judgement under the HRA, it might have to compensate its victims. What the industry fails to appreciate is that inaccuracy and intrusion can cost people immense and unjustifiable suffering and ensure; if it did there might be less resistance to the idea of compensating 'victims' from the profits publications earn from titillating the public at someone's expense.

5.12 This argument about the costs involved has been massaged into concern for the public by claiming that challenges under the Human Rights Act will incur heavy lawyers' fees, so excluding ordinary members of the public.

5.13 There is some truth in this, although the Act was amended to ensure that ordinary citizens should still be able to protect their rights by applying to the PCC for a swift, cheap remedy.

5.14 However the financial sanctions imposed under the HRA are minimal compared to the annual costs to newspapers defending or diverting libel claims, where awards may be substantial enough to worry accountants and shareholders alike. The public is never told how many millions are spent in settling such claims out of court.

### **Human Rights Commission**

5.15 The real weakness of all human and civil rights legislation in the UK is that the government has yet to provide the essential back up that citizens need to protect their rights once encoded. Namely the creation of a Human Rights Commission, able to offer guidance or assistance to members of the public, and with the power to initiate legal challenges where important issues of principle are at stake.

5.16 Without a Human Rights Commission it is inevitable that only those with sufficient funds will have recourse to law, allowing the press to make much of the fact.

5.17 In the Mephistophelean pact that allows celebrities to grace the columns of the newspapers, the media takes charge of 'the stuff of people's souls'. However this absolute loss of privacy now appears to extend to anyone who 'makes the news'.

5.18 It may be a journalist's job to winkle out information, and persuade people to speak to them, but no one is obliged to talk to the press - a fact that few people seem to appreciate. There is no reason why having been persuaded to talk, people's permission should not be sought

before personal details are revealed about matters which are only tangentially 'of interest to the public' (or 'something we think our readers might enjoy').

5.19 Even lottery winners are allowed the option of deciding whether or not they want publicity. Unless and until people are obliged to declare on their tax returns that they gamble on the national lottery, there is no reason why what they do with their money is anybody's concern other than their own, unless it is obtained from, or used for, some nefarious purpose.

5.20 Before publishing personal information, editors have a duty of care to be satisfied that they have a strong public interest defence and that the information they intend to publish is accurate. After all editors are the first to reach for their lawyers when complaints are made, and journalists are instructed never to admit to mistakes over the phone for fear of incurring a later penalty.

5.21 Anyone entering into a contract to sell information about themselves, often persuaded by the agents of a newspaper that this is the best way to preserve an element of control over their story, is likely to find that rival papers will assemble all manner of damaging information to rubbish their version of an event, or their character.

5.22 However, press freedom is not a licence to make money out of other people's misfortune; it is a responsibility exercised by journalists on behalf of the public to garner and publish factual information and disseminate opinion. Newspapers who recklessly seek to destroy the personality of a person simply in order to spoil a rival's 'exclusive' should consider first whether this might constitute an infringement on that person's human rights. Just because you show willing to talk to a newspaper should not make you 'fair game' - unless it can be proved that you have set out to deceive.

5.23 The PCC's role in all this is to strike a balance between the individual's right to privacy and the newspapers' right to freedom of expression once complaints are made. If it is even-handed and suitably robust in condemning breaches of privacy, self-regulation should successfully avoid legal challenges in the future, and thus become a much cheaper route than the courts for those upset by intrusive coverage.

5.24 However if the industry continues to insist that the HRA is a 'privacy law by the back door', and objects to the notion that judges should decide whether or not a person's privacy has been breached, parliament may have to introduce a statutory definition of the individual citizens' privacy rights. The industry objects to that, too. It wants to regulate its own affairs while strenuously objecting, with good reason, to other powerful institutions - Parliament, the police, lawyers and doctors - that wish to do the same.

5.25 For some reason, never fully explained by the press, the arguments marshalled against others do not apply to the Fourth Estate. The industry wants to be the sole arbiter of what is in the public interest and what is a breach of privacy, just as it believes that self-regulation is fine for itself but not for anyone else. In the PCC it pays for a system of public 'justice' in which it is judge and jury.

5.26 By demanding that the elected legislature should not define the electorate's rights and the courts should not adjudicate on whether the law has been breached, the industry lays itself open to the charge of arrogance and the sort of abuse of power against which the Human Rights Act is designed to protect the public.

5.27 Unless and until the evidence demonstrates that the courts are unfairly ruling that privacy rights should over-ride freedom of expression (and the evidence thus far from Strasbourg and the British courts suggests that the benefit of the doubt is more likely to favour freedom of expression) the newspaper industry should be willing to take its chances, and rely upon the

strength of its 'public interest defence' to save the day when Articles 8 and 10 appear to be in conflict.

5.28 In short, a responsible press should have little to fear from the Human Rights Act.

5.29 The inevitable consequence of the failure of the media industries to heed the concerns of the public and Parliament about the abuses of media power, will be stronger pressure for statutory controls. If the industry continues to seek to place itself somehow apart from the regulations with which others must comply, it may eventually encounter restrictive measures aimed specifically against the press. Thus far the public has had to rely upon civil remedies for breach of confidence, trespass or copyright, or defamation. Now criminal offences may be brought for harassment, and the threat of media criminalizing media payments to witnesses has not yet gone away.

5.30 In the absence of a Human Rights Commission and reform of self-regulation to satisfy everyone that the press are taking notice of public concern, and the media may soon have to contemplate the very privacy legislation it has sought so long to avoid.

## **6. Reforming media regulation**

6.01 PressWise has always argued for a genuinely independent regulatory system which protects everyone's rights - including the freedom of the press - with power residing neither with government nor the industry.

6.02 PressWise welcomes the creation of a single body (OfCom) - dealing with issues of licensing, ownership and control, distribution/delivery, technical quality and employment across all forms of electronic media - to regulate a media environment which is likely to be dominated by transnational corporations.

6.03 The old arguments (about spectrum scarcity) for separate regulation of broadcasting have been overcome with digitisation. However, cross-media ownership has now reached a level where it is difficult to measure the extent to which a company's involvement in one medium ends and its involvement in another begins. The web of ownership has become so complex that many people working in the media are unsure about who is their ultimate employer. Certainly few 'consumers' are likely to know who owns or controls the production of media products or the platforms through which they are communicated. Digital compression means that sound, vision, telephony and print are merely data - and so 'caught' by data protection legislation, for instance - and frequent takeovers, mergers and brand changes further confuse the issue for 'the punter'.

6.04 The advent of 'multi-skilling' means that media workers are expected to be able to operate in different media and with all the latest technology. One nonsense of the current regulatory regime is that journalists are expected to abide by different standards as they switch between media, making it even more appropriate to have a single basic code of conduct across all media, including a 'conscience clause'.

6.05 For these reasons PressWise would have preferred to see a separate Content Regulator dealing with ethical issues such as accuracy, fairness, and privacy. Supervision of the content regulation should be as independent of government and industry as possible with a strong element of public involvement at all levels, reflecting the diversity of society. It should include the industries, and media workers, who could be nominated by appropriate bodies. All such appointments could be made after scrutiny through a lay Panel delegated with the task by the (Culture, Media and Sport) Select Committee.

6.07 The content regulator could base its operations upon a basic, industry-wide basic Code, and would require a clear and accessible system for adjudication on complaints and the awarding of redress across all media.

6.08 Free independent professional advice and support should be available to members of the public who need assistance with complaints about any aspect of abuse of power by the mass communications industries.

6.09 Were a reformed system of media regulation to be 'rights-based', the best interests of all concerned would be served. Press freedom would be upheld through defence of freedom of expression, and the right to personal privacy would be upheld unless a clear and valid public interest defence could be demonstrated.

6.10 Financing of content regulation could follow the model currently used in broadcasting, with a mix of public funds to protect the democratic agenda, and levies upon the communications companies. To avoid the anomaly of responsible publications being required to subsidise the offences of more cavalier editors, it may be appropriate to consider requiring publishers to set aside a sum from which such compensation would be paid. Adherence to the terms of the code should avoid the necessity for any payments, but those publications willing to take risks 'in the public interest' should be willing to fight their corner and take the medicine if they failed to convince.

6.11 Such a system would help to rebuild trust in journalism and the role of the media, by assuring the public that the communications industries recognise their responsibilities.

#### **A hotline via the regulator**

6.12 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 PressWise shares the concern of the media industries about any form of 'prior restraint' which might be open to an abuse of power.

6.13 The public are no doubt as sceptical as media professionals themselves about the ability of 'palace press officers', the 'D-notice committee' or indeed the spin doctors of Downing Street to advise against the publication of material which may indeed be in the public interest. The 'smoke and mirrors' culture with which Lord Wakeham obscured the back-door dealings of the PCC needs to be cleared away.

6.14 It may be 'the British way', but for any system of regulation 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. It is important that there should be a means of advising editors of the risks and potential consequences of publishing.

6.15 PressWise believes that any system of regulation should incorporate an 'early warning system' which 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 causes unwarranted distress or harm to innocent parties, the fact that advance notice was given should be taken into account when adjudicating upon the complaint.

#### **Third-party complaints**

6.16 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, especially at election time or in periods of international crisis as now. Indeed, newspapers actively advance points of view and seek to influence their readers with editorials and comment columns.

6.17 All the more reason why third-party complaints should be given more consideration. Yet the PCC has granted itself the right to decide whether or not complainants are 'directly affected by the matters about which they complain'. Newspaper campaigns, against asylum-seekers or gays, for instance, are clearly intended to influence readers. Yet anyone from a social group that become the subject of hostile media attention is currently disallowed from obtaining redress by means of a complaint.

6.18 PressWise would prefer that far greater flexibility is adopted in making choices about which third-party complaints are entertained. Refusals should be accompanied by a clear and precise explanation. For example, any refugee, black person or gay man might reasonably object if a newspaper published inaccurate or prejudicial material about refugees, black people or gays, even if they themselves are not mentioned by name, since they are quite 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' and asylum seekers when the press have publicised an increase in numbers or the siting of hostels or their equivalent in a locality.

6.19 Nor is it unreasonable for readers who are not a member of the group under attack to complain if they feel that inaccurate or prejudicial material is likely to distort perceptions, or cause harm to others, or skew the responses of policy-makers.

6.20 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. 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'.

6.21 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.

### **Oral hearings**

6.22 The powerlessness experienced by people who become the focus of unwanted or unwarranted media attention is reflected in the process currently employed to deal with complaints about newspapers.

6.23 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. 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.

6.24 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.

6.25 Newspapers are in the 'word business', but not everyone feels competent or confident enough to defend their corner especially when they do not fully appreciate the rules. 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, as happened in the days of the old Press Council.

6.26 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.

6.27 PressWise believes that, in the interests of natural justice, there should be an opportunity for oral hearings at least in those problematic cases, where the PCC meets to adjudicate. This procedure is employed by the BSC and works well.

6.28 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. At one time 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.

### **Corrections**

6.29 Most complainants simply want a prompt and prominent correction when an inaccuracy has been published. PressWise welcomes the fact that some newspapers now have a regular set place 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.

6.30 The solution favoured by many complainants, would be to follow 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.

6.31 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 having first been 'full of errors'. 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.

6.32 The existing industry code contains no specific requirement to ensure that cuttings files and news/feature databases are tagged with corrections to ensure that inaccurate information is not constantly regurgitated. 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. It could be a part of the role of a Readers' Editor to monitor the procedure. A code of conduct on this should be agreed with editors, with automatic reprimands when it is breached.

6.33 This approach may not be at all 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. A photo of a person in full dress at a public function is hardly an adequate recompense for a telephoto shot of them skimpily clad on a private beach. The guarantee that it won't happen again - and a contribution towards the costs of the ruined holiday - might be more appreciated...

### **Compensation**

6.34 The PCC and the industry insist that proprietors and editors should determine what punishment should fit which media 'crime'. Yet it is proprietors and editors who cry loudest about the shortcomings of self-regulation among other professions - from the police to politicians. If it is inappropriate for the police to police the police, it is surely inappropriate for the newspaper industry to be its own judge and jury.

6.35 Significant awards in damages have been won through industrial tribunals for abuse of power by employers in the public sector. Surgeons and solicitors have been struck off, and police officers disciplined by their internal regulatory systems. Even parliamentarians have been forced out of office, suspended for unethical behaviour.

6.36 PressWise would not suggest that such direct punitive measures should be applied as a matter of course to an individual editor for breaches of the industry code. The pressures of the production process anyway make such precise liability problematic. Personal liability of this type could be seen as the thin end of a wedge leading to the licensing of journalism - although the public must find it odd that some editors appear to wear their breaches with pride rather than humility. It is to be hoped that within the industry a constant flow of complaints laid at one

particular editor's door is likely to lead to relocation, but press freedom would indeed be at risk if editors were not free to make mistakes.

6.37 However, it is unreasonable that innocent victims of media 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.

6.38 Breaches should be dealt with like any other violation of human rights with appropriate sanctions, including compensation for the 'victim'. It might be helpful if there were a graded system of financial sanctions - say £10,000 for an extreme violation; £5,000 for a serious breach, £1,000 for a significant intrusion. The content regulator would seek to obtain consensus as to which should apply, to avoid the necessity for costly legal argument.

6.39 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 broadcasters under the Broadcasting Act, might be considered as an alternative. The newspaper industry is reluctant to give PCC the power to impose fines (or a levy based on circulation or advertising revenue) for serious breaches of the Code, yet advertisers expect to be compensated when errors appear in their copy, or print or broadcast publishers fail to honour their obligations under contract.

6.40 The contract between readers and editors may be unspoken and uncodified, but editors seem to rely upon an (albeit jocular) assumption that readers can decipher which information they are supposed to believe and what to take with a pinch of salt.

6.41 The public are now aware of the enormous harm that unethical behaviour can do, and is more likely to place its trust in a body that has powers to hit commercial concerns where it hurts most if their agents breach professional or ethical standards. Those editors who breach the industry's Codes of Conduct should be required to compensate their victims, and such 'fines' would be a very effective way of reminding editors and proprietors of their responsibilities.

### **Media Ombudsman**

6.42 In the absence of such reforms, PressWise would lend its support to a variant on the idea promulgated in the (National Heritage) Select Committee's 1993 Report on Privacy and Media Intrusion for the appointment of a Press Ombudsman.

6.43 To bolster public confidence in the accountability of the print and broadcasting industries, the role of a Media Ombudsman should be to act as a back-stop - dealing with appeals by either party over the decisions of the PCC and OfCom, and to act as a bulwark against further erosions of press freedom.

6.44 The Media Ombudsman might also play a useful role in ensuring that those entering the media industries are aware of their responsibilities and receive a thorough grounding in media regulations and codes of conduct, whether through vocational training courses or in-service and mid-career training.

6.45 The Media Ombudsman might also act as a conduit through which the views of 'consumers' of mass communications are fed into the media producers, conducting research and encouraging dialogue between producers and consumers, particularly around ethical issues and reviews of Codes of Practice.

## 7. Do we need new privacy legislation?

7.01 In his introduction to *International Privacy, Publicity and Personality Laws*, Michael Henry lays stress on the commercial interests that inspire opposition to privacy laws by the newspaper industry.

7.02 The post-war European Convention on Human Rights was devised to protect citizens from the fear of the vested interests of fascist or communist totalitarianism regimes. Yet nowadays trans-national corporations exercise more power to protect their commercial interests than many a national Government, and international media conglomerates have shown themselves to be equally insistent that their commercial interests should be protected. They object to what they regard as unnecessary restrictions upon their ability to expand across media and borders, witness the current round of GATS negotiations.

7.03 Horizontal and vertical integration has created a global media industry for which the acquisition of profit means more than the dissemination of unbiased information. To protect his investment Murdoch was quick to drop the BBC from his satellite transmissions into China, at the behest of the Central Committee.

7.04 What has this got to do with privacy and media? That depends entirely upon the how the media owners view their relationship with their 'consumers'. If, as the evidence suggests, the primary motive of proprietors is to maximise profits, and selling scandal and sensation makes profits, the likelihood is that the 'rot' will continue.

7.05 Most people object just as strongly to commercial organisations collecting and disseminating information about them as they do to the state prying unnecessarily into their private affairs, especially if the motive is as venal as attracting new readers and advertisers.

7.06 Nowadays stories are marketed as commodities. The front pages of newspapers are emblazoned with 'a bit of everything for everyone' - the 'news' splash is supplemented above-the-fold tasters about 'showbiz', sex and sports, and/or a come-on about a chance to win prizes or money or pick up something free inside.

7.07 In a fiercely competitive market such techniques are hardly surprising, especially since circulation (and hence advertising) is boosted by attracting new readers on a day-to-day basis. The angle and the photos (Princess Di on the front still boosts sales) are what first attract attention on the news-stand, but the tasters may make all the difference to potential purchasers, especially when the splash is likely to be a variant on the same news item across the board, and often focuses on fear - currently of war or asylum-seekers, and perennially of disasters and terrorism.

7.08 Free CDs, bulbs, and holidays may have lasting appeal, but more often than not it is titillating morsels of personal information which that are designed to make the difference.

7.09 For that reason alone all soccer stars and other celebrities would be advised to think twice before having a one-night stand, because the press - in its Big Brother/God role - may be watching for an opportunity to boost sales. The public are rarely told how these stories come to reach the newsstands. Hotel staff, cab drivers and police officers all know that a good price is paid for tip-offs - the more salacious the better. All the fearless reporter then has to do is waylay the unfortunate woman involved and offer her the chance to 'tell her side of the story', tackling her fear or reticence by warning that they intend to print a story anyway. By co-operating she gets a sympathetic hearing, and some cash. Little does she realise that she in turn will be vilified as a 'kiss-and-sell' floozy, rather than the frightened victim of a form of blackmail.

7.10 In the summer of 2001, when newsreader Anna Ford lost her legal challenge to the PCC's rejection of her complaint about the marketing by the *Daily Mail* and *OK!* of intrusive

photos taken on a beach during a family holiday, leading media lawyers were convinced that pressure for a new privacy law would build.

7.11 Their predictions were dismissed as self-serving by the Press. The decision in the Naomi Campbell case was similarly mocked, just as short shrift was given to Gary Flitcroft attempt to use the courts to gag the press.

7.12 Similar 'panic attacks' (alarm followed by contempt - both signs of fear) beset the press when use is made of the Prevention Against Harassment Act or the Defamation Acts, or any other recourse allowed by law to rein in alleged excesses by the media. It is quite proper for the media to defend its corner, but it does have a rather unfair advantage over others in that it has controlling influence over how the debate is conducted. Since the death of Princess Diana, media lawyers have been suggesting that the 1997 Protection from Harassment Act - originally designed to protect people from stalkers - can and should be used against 'door-stepping' journalists, putting them and their editors at the risk of hefty fines and imprisonment.

7.13 Ms Ford herself argued against a specific law directed against the press. "I don't wish there to be new privacy laws because I believe very strongly in freedom of expression and its fundamental importance and the role the fourth estate plays in democracy. Without that we would have a more secretive society than we already have."

7.14 Speaking about her own case she said: "In a way that any ordinary citizen of this country would understand it was an invasion of privacy that all people would mind about. They don't mind having a photograph taken with their permission... but they do mind long lens photographs taken secretly being sold for profit to the press". Acknowledging her position in public eye she went on: "Nevertheless, as a person with a family on family holidays in the school holidays, I have a right to privacy".

7.15 Commenting on the PCC she said the editors "hold sway and get their own way a great deal more than they should", particularly on matters of privacy. She felt she might have got a better result if she had sued under in the Human Rights Act.

7.16 Her views echo the position taken by PressWise. A comprehensive Freedom of Information Act would serve the public better than a privacy law directed against the media. Media attention might be directed to issues of more genuine public interest if national and local government were more open, and there were fewer means of obscuring from public view the activities of public bodies and commercial organisations.

7.17 However a contrary view is offered by the civil liberties watchdog Liberty, whose public affairs director Deborah Clark argued in 2000 that, "it is high time for a privacy law in this country. We need a clear protection for everyone's privacy, not just a possible recourse for those who can afford to pursue expensive legal action (and then only after their privacy has already been violated). Clear rules on what constitutes an invasion of someone's privacy - and clear redress when that privacy is invaded - cannot come soon enough."

7.18 More recently the Institute of Public Policy Research came out in favour of tougher sanctions for breaches of privacy by the media, a review of case law and media regulation of privacy matters, and the promulgation of plans for privacy legislation to define the extent of personal privacy. (4)

7.19 During an earlier hiatus about privacy, *Guardian* editor Alan Rusbridger mooted the idea thought that newspaper editors and the regulators might be helped to get it right if personal privacy were defined in statute, given continuing evidence that they could not restrain themselves voluntarily from over-stepping the boundaries of personal privacy.

7.20 One of the biggest anxieties of the media is that judgements on case brought under the Human Rights Act by those who can afford litigation will forge a privacy law by default. Judges are public figures too, and some will have skeletons in their closets. The fear is that they may wish to protect their own backs by expanding the boundaries of privacy through case law. Similar criticisms are levelled at politicians, whose antipathy to criticism by the press is legendary, and whose undoing is one of the favourite sports of the press, especially when there is whiff of restrictive legislation in the air.

7.21 Undoubtedly that is one of the functions of a free media in an open democracy, just as one of the functions of the legislature is to pass laws to protect the public and enhance democratic participation. However, both must use their power wisely and avoid taking liberties with the tolerance or the inertia of the public.

7.22 Defending press freedom includes acknowledging that occasionally the media will get things wrong. Exercising that freedom includes a responsibility to admit to mistakes, publish corrections and apologies promptly and prominently, and to compensate those who suffer loss or damage as a result of errors of fact or judgement.

7.23 A privacy law directed specifically against the media is inimical to press freedom. However print and broadcast journalists and executives may find it helpful if there were a privacy law which defined more precisely what protection the individual can expect from unwarranted intrusion by any public authority or commercial institution.

7.24 Such legislation must allow for a public interest defence, and should be drafted only after wide public consultation. In the absence of a Bill of Rights or a Human Rights Commission, it is perhaps appropriate for the public, politicians and the press to decide how the notion of respect for personal privacy outlined in the Human Rights Act should be defined.

7.25 The Select Committee might like to recommend that a major public consultation exercise should be launched to ascertain which of the many different perceptions of the limits of personal privacy should be codified in law. Only then should the process of drafting such a law proceed.

### **Footnotes**

1. See the weekly trade magazine *UK Press Gazette*, which records each occasion when challenges fail or are successful.
2. *The Press Complaints Commission: a study of ten years of adjudications on press complaints*. (UNPUBLISHED) Chris Frost, Head of Journalism at Liverpool John Moores University, chair of the NUJ's Ethics Council, and author of *Media Ethics and Self-regulation* (Longman, 2000), *Reporting for Journalists* (Routledge, 2001) and *Designing Newspapers and Magazines* (Routledge, 2003).
3. *Press Complaints Commission Annual Report, 2001*
4. *Ruled by Recluses? Privacy, journalism and the media after the Human Rights Act*, Ed Damian Tambini & Clare Heyward, (IPPR, 2003)