House of Commons

Culture, Media and Sport Committee

Press standards, privacy and libel: Responses to the Committee's Second Report of Session 2009–10

First Special Report of Session 2010–11

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The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Culture, Media and Sport and its associated public bodies.

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The current staff of the Committee are Tracey Garratty (Clerk), David Griffiths (Second Clerk), Elizabeth Bradshaw (Inquiry Manager), Jackie Recardo (Senior Committee Assistant), Luisa Porritt (Committee Assistant), Gabrielle Henderson (Committee Support Assistant) and Laura Humble (Media Officer).

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First Special Report

1. On 24 February 2010, the Culture, Media and Sport Committee published its Second Report of Session 2009–10, *Press standards, privacy and libel*.[1] On 6 April 2010 the Committee published the response which it had received from the Press Complaints Commission.[2]

2. The Committee has now received responses from the Press Standards Board of Finance (PressBof) and Editors' Code of Practice Committee. These replies are published below as Appendices 1 and 2.

1 HC 362-I & II, Session 2009–10

2 HC 532, Session 2009–10

Appendix 1: Reply from Press Standards Board of Finance

This response to the Select Committee report is made by the Press Standards Board of Finance, the body which funds the PCC and oversees the industry's input into the system of self regulation. It covers matters raised in the report which relate directly to the newspaper and magazine publishing industry. Responses from the Press Complaints Commission [PCC] and the Editors' Code Committee will cover their own areas of responsibility.

The Select Committee is to be commended on a comprehensive and thoughtful report which covers a large number of areas of vital interest to our industry. There is much with which we can agree, but there are a number of other areas on which there are inevitably significant disagreements between us.

For the purposes of this brief response, we will take the recommendations in order.

Chapter 2 – Privacy and breach of confidence

- On privacy, we agree with the Select Committee that there is no need for further legislation on privacy, especially as the Human Rights Act [HRA] – the application of which the Committee rightly recognises has been muddled because of the limited number of judgements (para 67) – has already created a back-door privacy law. And we welcome the Committee's rejection of the idea of mandatory pre-notification in privacy cases. Not only would this be "ineffective", as the Committee recognises, but could pose a serious threat to freedom of expression (para 91).

- The Committee is right to be concerned about the lack of data on the operation of Section 12 of the HRA and on the granting of injunctions on privacy issues, and we agree that there needs to be urgent research into the issues by the Lord Chancellor, Lord Chief Justice and the courts (para 37).

- The Committee is also right to be troubled about the use of so-called "super-injunctions", which we believe are wholly inimical to freedom of expression, and we agree that a way needs to be found to limit their use (para 102).

Chapter 3 – Libel and press freedom

- On libel and press freedom, we support the Select Committee's view that the enormous costs of libel cases need to be cut, and in particular that measures should provide for more certainty on the issue of costs at an early stage of libel proceedings (para 129).

- The industry is closely involved in the Ministry of Justice's review of libel laws, and we welcome the Select Committee's support that a number of areas need to be addressed in this review, including their impact on the press's ability to make fair

comment (paras 141–142) and the issue "libel tourism" (para 207), which is having a profound impact on press freedom in the UK.

Chapter 4 – Costs

- On costs, the Select Committee is right to recognise that a serious issue now facing defendants – and in particular the media – in conditional fee cases is that many have to settle cases that should not in fact be settled simply in order to limit costs (para 262). We strongly support action to deal with this, including mandatory costs capping (para 274) and steps to limit recoverability of ATE insurance premiums (para 306). It is a matter of great regret that measures to limit success fees were not successfully implemented before Parliament was dissolved.

Chapter 5 – Press Standards

- The Select Committee recognises that there is a "great deal of good, responsible journalism in the British press" (para 324), and it is right to do so.

- In doing so, the report makes much of the one-off episode of the McCanns, and their tragic story. While much of the analysis in the report relating to the case of the McCanns is for the PCC to deal with, we note that the Committee has been right to highlight a number of the issues which impacted on all newspapers – including the problem of the foreign jurisdiction and unclear contempt laws, the exceptionally high public demand for news of Madeleine McCann and public support for the campaign to find her, and the lack of official information from the Portuguese police and authorities.

- Even against that background, the industry has learned lessons from this episode, and will work with the PCC in future to ensure that such issues do not recur.

Chapter 6 – Self-regulation of the Press

- We welcome the view from the Select Committee that "self-regulation of the press is greatly preferable to statutory regulation and should continue" but we cannot accept that the PCC is "toothless" (para 531). For the industry, the PCC has real bite. As the industry made clear in its submission to the Select Committee inquiry, the PCC has achieved a great deal since it was set up in 1991, including a very significant improvement in standards of press reporting.

- Of course it is right that the structure of the PCC, and the contents of the Code, are kept under review, and other responses to you will deal with those. We would not want to comment further at this stage on matters that are the subject of the PCC Governance review, including the appointment of editors to the Commission, a matter of great importance in a system of effective self regulation (para 543). We are co-operating fully with the Governance Review Team on this and other matters, including the composition of the Commission and of the Code Committee.

- The Select Committee is right to highlight the importance of industry compliance with the system, particularly in the area of funding (para 557). The industry has invested well over £30 million in the PCC since it was established, thanks in part to

the very high levels of voluntary compliance. We do not believe that it is therefore fair to describe the system as "precarious" and it is wholly wrong to make such an assertion (para 558).

- While it may be worth examining whether there are ways in which publishers could be given incentives to subscribe to the system (para 558), we are sceptical as to whether this could be achieved without legislation, which would be anathema to the principles of self regulation. However, it is an issue we will continue to monitor and we would welcome constructive proposals, particularly if this was part of a wider package of urgently needed libel law reform.

- As far as the issue of the inclusion of adherence to the Code of Practice into journalists' and editors' contracts of employment is concerned – something PressBof has always strongly supported – compliance is already very high. With the PCC, we will be undertaking a fresh study in this area in order to be able to provide up-to-date figures.

- On the issue of sanctions (para 575), we do not believe that the Select Committee has given enough weight or credit to the effectiveness of the existing sanctions of the PCC. As the PCC made clear in evidence to you, the power of a critical adjudication is extremely significant, and has indeed been the basis on which the system has worked to raise standards of reporting. The industry will always be willing to discuss with the PCC ways in which the effectiveness of this sanction can be enhanced further.

- The introduction of a system of fines would alter the entire basis of a system which currently operates in fast, free and fair manner in the interests of the public. The vast majority of the complaints to the PCC are resolved in an amicable manner to the satisfaction of complainants, and this is achieved because the PCC operates in a common sense, non-legalistic manner and with the support and co-operation of editors.

- The introduction of a financial sanction would change all that. It would inevitably introduce a legal and adversarial element into the system – both on behalf of complainants and of newspapers – which would slow the complaints process down and make the resolution of complaints much more difficult. It would mean, without doubt, some form of appeals process and also introduce the whole question of the payment of costs for successful complaints. It is difficult to see how all this could be managed without some form of legal basis for the PCC. While the Committee speculates that industry might in theory be able to submit to some voluntary agreement (were it not for strong objections in principle), it is highly unlikely that claimant lawyers – who would soon populate the system – would accept that without some form of statutory framework.

- It would also seem likely that the introduction of financial penalties might well chip away at the extremely high levels of voluntary compliance on which the system is based (and which the Select Committee itself believes to be important.) Many publishers are under serious commercial pressure and might believe it better to turn their backs on amicable resolution and leave the system rather than to risk

going out of business on the back of a fine or take their chance in the Courts. We therefore believe that the Committee's recommendation on fines is at odds with its desire to underpin the system with some form of subscription incentive (para 558).

- The proposal that the PCC should have the power "to order the suspension of printing of [an] offending publication for one issue" in the case of serious breaches of the Code is – we have to say – repugnant in a free society. To the best of our knowledge, such a sanction exists nowhere else in the free world, though it is something which happens in countries such as Zimbabwe and North Korea.

- Apart from the moral objections – denying freedom of expression to writers, readers and advertisers – such an idea would be unworkable in the digital age, unless the Select Committee is suggesting that the PCC should also be given power to take down a newspaper's website.

- No newspaper or magazine would submit to such a punitive regime – especially when the loss of one issue might be enough to put some weekly newspapers or monthly publications out of business – and compliance with the system would be shattered.

- In any case, the PCC already has a powerful sanction for serious breaches of the Code in that it can refer a critical adjudication in such cases to a publisher with a recommendation that it be treated as a contractual issue. This has happened a number of times, with great effect, in the past.

Against the background of these comments, PressBof will continue to work with the PCC – and, in the short term, the Governance Review Team – to ensure that the system of self regulation remains effective, modern and up-to-date, and that, above all else, it continues to serve the public and to raise and uphold standards of reporting.

April 2010

Appendix 2: Reply from Editors' Code of Practice Committee

Introduction

The Editors' Code of Practice Committee is the industry body that writes, reviews and revises the Code, which is at the heart of the UK system of press self-regulation administered by the PCC. It has considered the Select Committee's Report and, in particular, the comments relating to the Code's part in the self-regulatory process.

The Code Committee fully acknowledges the Report's scale and scope, and very much applauds its reiterated commitment to self-regulation of the press. However, we are concerned that the exceptional breadth of the inquiry may, occasionally, have resulted in mischaracterisation of key issues. The Report fails, for example, to recognise some of the balancing principles of self-regulation in general, and goes on to perpetuate some popular misconceptions about the UK system in particular. (In the interests of accuracy, it is not the '*PCC Code*', nor the '*PCC's Codebook*': both are produced by the industry – independently of the PCC – as part of its commitment to self-regulation.) Perhaps another symptom of this very broad remit was the lack of consultation on some far-reaching proposals for change. We are, therefore, glad of this opportunity to comment.

The issues raised by the Report of direct concern to the Code Committee fall under two headings:

- Constitutional changes – lay membership and an extension to the sanctions regime; and
- Changes to the Code of Practice and to *The Editors' Codebook*.

This response is, therefore, confined largely to considering recommendations in those areas.

1. Constitutional issues

1.1 **Lay membership of the Code Committee:** The Select Committee recommends that the Code Committee should admit lay members, including a lay chairman. This is related to matters being considered by the PCC Governance Review panel and we would not wish to anticipate those outcomes. However, it would be fair to state that it is an established tenet of most self-regulatory systems that there should be a proper balance between the roles of the industry itself and lay representatives. In the case of press self-regulation, the very substantial lay input into the administration of the Press Complaints Commission gives it authority and credibility with the public.

1.2 One of the balancing principles is that the industry should have ownership of the Code. It is this that gives the Code authority and respect in the industry, ensuring high levels of compliance. Editors, who are responsible for ensuring that compliance, could not (and do not) challenge a Code that they themselves have written. Any dilution of this principle risks endangering those levels of industry buy-in and compliance. This should not be dismissed lightly. In the 20 years that the Code has been in operation, no newspaper found to have

breached the rules has ever failed to honour its obligation to print the PCC's critical adjudication. That is a record rarely matched internationally.

1.3 The Code Committee has always acknowledged the importance of the lay membership of the PCC in this balance and the Code deliberately gives very wide discretion to the adjudicating Commissioners. Their views are also represented at Code Committee meetings by the presence – and full participation in proceedings – of the PCC's Chairman and Director. We, of course, await the Governance Review panel's thoughts, but the Code Committee is already exploring ways in which this interchange of views might be improved.

1.4 **Financial penalties and suspension of publication:** Any decision on an extension of sanctions is outside the Code Committee's immediate remit. However, it would be remiss not to alert the Select Committee to the negative impact such changes would have on the Code itself. Currently, the Code sets out to be non-legalistic in approach and tone, which makes it accessible to ordinary members of the public. It relies heavily on a feature unique to self-regulation: the *spirit of the Code*, its underpinning philosophy, which is the antithesis of a legalistic approach. It does not permit an editor to take refuge in a thicket of small print. It takes a broader, more balanced and more open stance. It states, at the very outset:

> *It is essential that an agreed Code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.*

1.5 The introduction of fines – let alone Draconian powers to suspend publication – would radically alter the nature of self-regulation. Inevitably, the commercial threat would mean the system would become increasingly the preserve of lawyers and the Code would be forced to adapt to reflect that. It would become legalistic, abstruse, less accessible to the public, and the central philosophy of acting within the spirit, rather than to the letter, would inevitably be lost, to the great detriment of the system. **The PCC prides itself on providing a free, speedy service that is open to all, regardless of their income. If fines were introduced, both sides would be forced to involve lawyers – leading to considerable delay and costs for all concerned.**

1.6 The issue of suspension of publication raised in the Report appears to have come from nowhere. It was not put to senior editorial figures giving evidence to the inquiry, even though it would be almost universally condemned as dangerous and inimical to press freedom. It is also incompatible with the Select Committee's own sound reasoning, elsewhere.

1.7 The Report rightly commends the Government for abolishing criminal libel because of its negative influence on press freedom abroad. But that same impeccable logic would have equal force when applied to suspension of publication – a proposal that, by its example, would give a bogus legitimacy to the activities of some of the most tyrannical regimes on the planet. Neither the British Parliament nor the UK press should be in such company.

2. Changes to the Code of Practice

2.1 **Prior notification:** The Code Committee welcomes the Report's acceptance that 'clearly pre-notification, in the form of giving opportunity to comment, is the norm across the industry', which is certainly the case. The PCC has considered that, in certain circumstances, failure to put uncorroborated allegations to the subject can amount to taking insufficient care to establish the truth. The Code Committee takes the view (as did the previous Government) that such notification – for substantially the same reasons as those identified by the Select Committee – is not always either possible or, for reasons of public policy, desirable and therefore could not be obligatory.

2.2 Our Committee had already scheduled improved guidance on this to be included in an update to the online version of *The Editors' Codebook* later this year. However, any guidance or codification, as suggested by the Select Committee, could be influenced by the Max Mosley case at the European Court of Human Rights. Since this is now being fast-tracked and could be heard later this year, or early next, it would be inappropriate to take any course that might have to be re-considered in the light of an imminent ECtHR decision.

2.3 **Headlines:** It is a popular myth that headlines are not covered by the Code. They are an integral part of a story and, as such, are subject to the normal rules that care should be taken not to publish inaccurate, misleading or distorted information. The PCC had adjudicated on misleading headlines and, indeed, there are four such examples in *The Editors' Codebook*.

2.4 However, the Code Committee is drafting new guidance for inclusion in the *Codebook*, which will cite cases where headlines have been found to be in breach by being inaccurate, misleading or distorting.

2.5 **Reporting suicide:** The Code Committee has gone to some lengths to meet public concerns about coverage of suicide – engaging with support groups such as the Samaritans and Papyrus, updating the Code to include coverage of suicide, and producing a full-page briefing in the *Codebook*, applauded by them. We are pleased that the Select Committee also accepts the Code's effectiveness on this issue.

2.6 But the Report's suggestion that newspapers should proactively monitor their websites, to prevent offensive user-generated content relating to suicide and personal tragedies, raises wider issues. Most user-generated content on newspaper sites, as elsewhere, is reader-moderated: when a reader complains about offensive material, it is dealt with. Pre-moderation would be against the Internet's core concept of unrestricted access; would be prohibitively costly for most newspapers and magazines in a particularly difficult commercial environment; and has complex ramifications that could increase publishers' liability in the event of legal action. The Code Committee is investigating its options in this area, but they may be very limited.

2.7 **Prominence of corrections and apologies:** Another common myth about self-regulation is that apologies and corrections are routinely squirreled away in an obscure part of the newspaper, without due prominence. In fact, the PCC already monitors prominence. It has found that 84% of corrections appear on the same page or earlier, or in

a designated corrections column. In many cases, prominence is discussed with editors prior to publication.

2.8 That being so, the Select Committee's concerns on this have largely been met: the great majority of corrections and apologies *do* appear on the same page or earlier and editors *do* routinely consult the PCC on positioning. Indeed, the positioning has very often been decided informally in conjunction with PCC staff. However, to underline the importance of this, the Code Committee is to explore with the industry and the PCC on the mechanics of a Code change which would require that, in complaints involving the Commission, the prominence of apologies or corrections should be agreed with the PCC in advance.

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