



DEPARTMENT OF NATIONAL HERITAGE

Review of Press Self-Regulation

Sir David Calcutt QC

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Presented to Parliament by the Secretary of State for the
Department of National Heritage
by Command of Her Majesty
January 1993

The evil that men do lives on the front pages
of greedy newspapers, but the good is oft
interred apathetically inside.

Brooks Atkinson
American essayist
Once around the Sun 1951



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Sir David Calcutt QC

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The Rt Hon Peter Brooke CH MP
Secretary of State
Department of National Heritage
Horse Guards Road
London SW1P 3AZ

8 January 1993

Dear Secretary of State,

On 9 July 1992 your predecessor, the Rt Hon David Mellor QC MP, asked me to conduct a Review of press self-regulation.

I now have the honour to submit my Review.

Yours sincerely,

David Calcutt

DAVID CALCUTT

Contents

<i>Chapter</i>		<i>Page</i>
	Detailed Table of Contents	vii
	Appendices	x
	Summary	xi
1	Introduction	1
2	Resumé of the Privacy Committee's Report	4
3	Response to the Report	9
4	Review of Press Self-Regulation 1991-92	25
5	Assessment of Self-Regulation	37
6	A Statutory Tribunal	45
7	Further Measures	51
8	Conclusion	63
	 <i>Appendices</i>	
A	List of Witnesses	64
B	Recommendations of the Privacy Committee	75
C	Codes of Practice	78
D	Draft Clauses	87

Detailed Table of Contents

<i>Chapter</i>		<i>Paragraph</i>
	SUMMARY	
	My approach	1
	Assessment	5
	Statutory tribunal	9
	Physical intrusion	10
	Tort of infringement of privacy	17
	Data Protection Act 1984	18
	Legal restrictions on press reporting	19
	Interception of telecommunications	20
	Conclusion	22
1	INTRODUCTION	
	Appointment and terms of reference	1.1
	My approach	1.4
	Invitations to submit evidence	1.8
	Structure of the Review	1.13
	Acknowledgements	1.14
2	RESUMÉ OF THE PRIVACY COMMITTEE'S REPORT	
	Introduction	2.1
	Recommendations	2.6
	Press Complaints Commission	2.7
	A package	2.10
	Misunderstandings	2.11
	Self-regulation	2.12
	Press Council	2.15
	One last chance	2.17
3	RESPONSE TO THE REPORT	
	Response in Parliament	3.1
	Response of the press	3.5
	Other responses	3.8
	Present position on recommendations	3.14
	The Press Complaints Commission	3.15
	Pressbof	3.16
	Press Complaints Commission chairman	3.24
	Press Complaints Commission premises	3.27
	Press Complaints Commission staff	3.29
	Appointments Commission	3.32
	Press Complaints Commission membership	3.34
	Press Complaints Commission remit	3.36
	Code of practice	3.42
	Hot line	3.63
	Third-party complaints	3.71
	Inquiries	3.75
	Procedure	3.78
	Waiver	3.81
	Finance	3.82
	Liaison	3.92
	Summary	3.94

<i>Chapter</i>		<i>Paragraph</i>
4	REVIEW OF PRESS SELF-REGULATION 1991-92	
	Introduction	4.1
	The work of the Press Complaints Commission	4.4
	Private individuals	4.19
	Public figures	4.29
	Royalty	4.41
	Politicians	4.56
	Reactions of public figures	4.70
	Overview	4.71
5	ASSESSMENT OF SELF-REGULATION	
	Self-regulation	5.1
	Debate in the House of Lords	5.3
	Last chance saloon	5.20
	Triggers	5.21
	Assessment	5.26
	Modification	5.27
6	A STATUTORY TRIBUNAL	
	Introduction	6.1
	Press Complaints Tribunal	6.3
	Functions and powers of the tribunal	6.5
	Jurisdiction	6.7
	Code of practice	6.8
	Restrain publication	6.10
	Third-party complaints	6.11
	Initiate investigations	6.12
	Procedures	6.14
	Sanctions	6.17
	Appeal	6.23
	Review	6.24
	Report	6.25
	Advertisement	6.26
	Waiver	6.27
	Membership of the tribunal	6.28
	Staff	6.29
	Funding of the tribunal	6.30
	Media regulation	6.31
7	FURTHER MEASURES	
	Physical intrusion	7.1
	The offender	7.5
	Private property	7.8
	Consent	7.10
	Lawful occupant	7.11
	Publication	7.12
	Surveillance device	7.14
	Photograph	7.15
	Recording	7.16
	Defences	7.17
	Anti-social conduct	7.21
	Prosecution	7.22
	Burden and standard of proof	7.23
	Penalties	7.24
	Summary of offences	7.25
	Civil remedy	7.27

<i>Chapter</i>	<i>Paragraph</i>
Legislation	7.31
An alternative approach	7.32
Tort of infringement of privacy	7.33
Data Protection Act	7.43
Reporting restrictions	7.47
Jigsaw identification	7.49
Interception of telephone transmissions	7.50
Mobile telephones	7.60
Interception	7.61
The way forward	7.73
8 CONCLUSION	

Appendices

	<i>Paragraph</i>
A List of Witnesses	1.8
B Recommendations of the Privacy Committee	2.6
C Codes of Practice	3.47
D Draft Clauses	7.31

Summary

My approach

1 In conducting this Review, I have taken as my starting point the Report of the Committee on Privacy and Related Matters; but that Report has only been a starting point. I have considered all the evidence submitted to me and all the relevant material which has been made available to me. I have also been able to observe for myself press self-regulation in action during 1991 and 1992.

2 I have principally considered three matters:

- (i) Regulation of the press. Has non-statutory self-regulation since the establishment of the Press Complaints Commission been effective? Should the present arrangements now be modified; or should they now be put on a statutory basis?
- (ii) Better protection against physical intrusion.
- (iii) The possible introduction of a new statutory tort of infringement of privacy.

3 I have looked at the response to the Privacy Committee's report. In particular, I have reviewed the setting-up and operation of the Press Complaints Commission, and compared the Commission with what was recommended by the Privacy Committee.

4 I have considered self-regulation of the press during 1991 and 1992, principally by the Press Complaints Commission, and I have sought to assess whether the present arrangements for self-regulation have been effective.

Assessment

5 The Press Complaints Commission is not, in my view, an effective regulator of the press. It has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but also public confidence. It does not, in my view, hold the balance fairly between the press and the individual. It is not the truly independent body which it should be. As constituted, it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.

6 Could the present arrangements yet be modified so as to provide a Commission which would command public confidence and which would fairly hold the balance? Or has the last opportunity for self-regulation now passed?

7 It has been argued that two years is too short a time in which to judge the Press Complaints Commission. But the way forward was clearly spelt out in the Privacy Committee's Report. In particular, the Committee stressed the need for the Commission to be seen as an independent body which would command the confidence of the public. Both the Committee, and subsequently the Government, gave a clear indication that this was the last chance for the industry to put its own house in order. It has to be assumed that the industry, in setting up the present Press Complaints Commission, has gone as far as it was prepared to go. But it has not gone far enough.

8 In my view too many fundamental changes to the present arrangements would be needed. Nothing that I have learnt about the press has led me to conclude that the press would now be willing to make, or that it would in fact make, the changes which would be needed.

Statutory tribunal

9 Accordingly I recommend (recommendation 1) that the Government should now introduce a statutory regime, as set out in paragraphs 16.14-16.24 of the Privacy Committee's Report, and as supplemented by this Review. A statutory press complaints tribunal would need to have these functions and powers:

- (i) to draw up and keep under review a code of practice;
- (ii) to restrain publication of material in breach of the code of practice;
- (iii) to receive complaints (including third-party complaints) of alleged breaches of the code of practice;
- (iv) to inquire into those complaints;
- (v) to initiate its own investigations without a complaint;
- (vi) to require a response to its inquiries;
- (vii) to attempt conciliation;
- (viii) to hold hearings;
- (ix) to rule on alleged breaches of the code of practice;
- (x) to give guidance;
- (xi) to warn;
- (xii) to require the printing of apologies, corrections and replies;
- (xiii) to enforce publication of its adjudications;
- (xiv) to award compensation;
- (xv) to impose fines;
- (xvi) to award costs;
- (xvii) to review its own procedures;
- (xviii) to publish reports; and
- (xix) to require the press to carry, at reasonable intervals, an advertisement to be specified by the tribunal, indicating to its readers how complaints to the tribunal could be made.

Physical intrusion

10 I recommend (recommendation 2) that the criminal offences proposed by the Privacy Committee in paragraph 6.33 of its Report should (with modifications) now be enacted:

The following should be criminal offences in England and Wales:

- (a) entering or remaining on private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; or
- (b)
 - (i) placing a surveillance device on private property without the consent of the lawful occupant with intent to obtain personal information with a view to its publication; or
 - (ii) using a surveillance device (whether on private property or elsewhere) in relation to an individual who is on private property, without the consent of the individual to such use with intent to obtain personal information about that individual with a view to its publication; or
- (c) taking a photograph, or recording the voice, of an individual who is on private property, without his consent to the taking or recording, with a view to its publication and with intent that the individual shall be identifiable.

11 It should be a defence to any of the proposed offences that the act was done:

- (a) for the purpose of preventing, detecting or exposing the commission of a crime or other seriously anti-social conduct; or

- (b) for the purpose of preventing the public from being misled by some public statement or action of the individual concerned; or
- (c) for the purpose of informing the public about matters directly affecting the discharge of any public function of the individual concerned; or
- (d) for the protection of public health or safety; or
- (e) under any lawful authority.

12 The High Court should have the power, on the application of the individual concerned, to grant an injunction restraining the publication of any information, photograph or recording obtained by means of any act which constitutes one of the proposed offences; and the individual to whom it relates should have a right of action against any person who publishes it for any loss suffered by that individual, and for an account of any profits accruing to that person, as a result of publication.

13 This civil remedy should also be available if the act set out in any of the proposed criminal offences took place outside England and Wales if it was done, with the necessary intent, with a view to publication in England and Wales.

14 The defences which would be available to the criminal offences would also be available as defences to the civil remedy.

15 A prosecution for any of these criminal offences should only be brought with the consent of the Director of Public Prosecutions.

16 Since I am recommending the introduction of a statutory complaints tribunal, an alternative approach would be to incorporate the substance of the proposed criminal offences into the statutory code which the statutory tribunal would administer.

Tort of infringement of privacy

17 I recommend (recommendation 3) that the Government should now give further consideration to the introduction of a new tort of infringement of privacy.

Data Protection Act 1984

18 I recommend (recommendation 4) that the Government should now give further consideration to the extent to which the Data Protection Act may contain provisions which are relevant for purposes of misrepresentation or intrusion into personal privacy by the press.

Legal restrictions on press reporting

19 I recommend (recommendation 5) that the Government should now give further consideration to amending the legislation on the non-identification of minors in England and Wales to eliminate any inconsistencies or uncertainties, and that in any criminal proceedings the Court should have the power to make an order prohibiting the publication of the name and address of any person against whom the offence is alleged to have been committed, or of any other matters likely to lead to his or her identification.

Interception of telecommunications

20 There appear to be gaps in the legislation designed to protect private telephone conversations.

21 I recommend (recommendation 6) that the Government should now give further consideration to the legislation covering interception of telecommunications with a view to identifying all significant gaps and determining whether any further legislation is needed.

Conclusion

22 These recommendations are designed to make a positive contribution to the development of the highest standards of journalism, to enable the press to operate freely and responsibly, and to give it the backing which is needed, in a fiercely competitive market, to resist the wildest excesses. They are not designed to suppress free speech or to stultify a vibrant and dynamic press. They are designed principally to ensure that privacy, which all agree should be respected, is protected from unjustifiable intrusion, and protected by a body in which the public, as well as the press, has confidence.

1 Introduction

Appointment and terms of reference

1.1 When the Report of the Committee on Privacy and Related Matters was published in June 1990 (Cm. 1102), the then Home Secretary, Mr David Waddington QC MP (now Lord Waddington), said that the Government would review the performance of a non-statutory Press Complaints Commission after 18 months of operation to determine whether a statutory underpinning was required.

1.2 The Press Complaints Commission began work on 1 January 1991. At the conclusion of the 18-month period, the Secretary of State for National Heritage asked me to assess the effectiveness of self-regulation. My full terms of reference were these:

to assess the effectiveness of non-statutory self-regulation by the press since the establishment of the Press Complaints Commission and to give my views on whether the present arrangements for self-regulation should now be modified or put on a statutory basis.

1.3 I was also asked to consider whether any further measures might be needed to deal with intrusions into personal privacy by the press, and to make recommendations.

My approach

1.4 In conducting this Review, I took as my starting point the Privacy Committee's Report. This seemed to me to be reasonable. The Report had been unanimous; it had been accepted, in principle, by both the Government and the Opposition; and having chaired the Privacy Committee, the Government had come back to me to conduct this Review. Accordingly, I have not sought to re-visit the whole of the ground covered in that Report.

1.5 But the Privacy Committee's Report has only been a starting point. I have also considered all the evidence submitted to me and all the relevant material which has been made available to me. I have also been able to observe for myself press self-regulation in action during 1991 and 1992.

1.6 However, the thrust of the Review is different from that of the Privacy Committee's Report. The main thrust of the Report was to consider what measures were needed to give further protection to individual privacy from the press. The main thrust of this Review is principally to assess the effectiveness of the new regime of non-statutory self-regulation.

1.7 I have principally considered three matters:

- (i) Regulation of the press. Has non-statutory self-regulation since the establishment of the Press Complaints Commission been effective? Should the present arrangements now be modified; or should they now be put on a statutory basis?
- (ii) Amendments of the law to provide better protection against the most blatant forms of physical intrusion. The Privacy Committee's Report recommended new criminal offences (and an associated civil remedy), but they have not yet been implemented.
- (iii) The possible introduction of a new statutory tort of infringement of privacy.

Invitations to submit evidence

1.8 In July 1992 all those who had submitted evidence to the Privacy Committee were invited to submit further written evidence to this Review, with a target date of 1 October 1992. Advertisements were also placed in a representative selection of national daily papers, national Sunday papers, two Scottish and six regional papers. These advertisements invited the public to submit evidence by the same target date. The choice of newspapers in which these advertisements appeared was designed to ensure, so far as was reasonably possible, that invitations to submit evidence would come to the notice of most readers of newspapers. Representative press bodies were also encouraged to urge their members to submit evidence. In the result, 632 submissions were received by 31 December 1992. A full list of those who gave evidence is at Appendix A.

1.9 The Privacy Committee had received some 260 submissions in writing. It also took oral evidence from 30 organisations or individuals. That evidence was available to me. For the purpose of the Review, it seemed to me appropriate to seek evidence principally in writing; but, exceptionally, where I felt that some further elucidation might be likely to help, I sought oral evidence. I considered all evidence received by 31 December 1992.

1.10 During the course of my Review a number of opinion polls were published concerning privacy and the press. Generally, these polls were specifically intended to gauge the public's reaction to the way the press had dealt with some of the highly-publicised cases which arose during the course of my Review. Some of these polls went on to cover more general aspects of the way in which the press respected an individual's private life. I did not feel, however, that I could draw any safe conclusions from these polls. As has been frequently pointed out, the answers which a member of the public may give to a pollster may not be reflected in his or her subsequent actions. Many people may say that they abhor the treatment by the press of some individuals; but this abhorrence is not necessarily carried through into abstaining from purchasing the newspaper in question. Indeed, many of the highly-publicised cases have led to significantly increased circulation for the newspapers concerned.

1.11 Apart from the evidence which I received in response to my invitation to submit evidence, I have also considered the responses both in Parliament and in the press to the Privacy Committee's Report, and the initiatives taken as a consequence of that Report. In particular, I have considered the setting-up and operation of the Press Complaints Commission. I have also considered debates in Parliament on press-related matters since the Privacy Committee reported. Through both a media search and a scrutiny of press cuttings, I have considered relevant press coverage. I have also considered opinions expressed by academic writers.

1.12 The evidence I received was helpful, and I have drawn extensively on that evidence. But I did not believe that it would have been sensible, or indeed practicable, to try to acknowledge the source of every comment or contribution.

Structure of the Review

1.13 My Review is set out in this way:

- Chapter 2 provides a resumé of the Privacy Committee's Report.
- Chapter 3 considers the response to the Privacy Committee's Report. In particular, I have analysed the setting-up and operation of the Press Complaints Commission, and have compared the Commission with what was recommended by the Privacy Committee.
- Chapter 4 reviews significant aspects of press self-regulation during 1991 and 1992.
- Chapter 5 seeks to assess whether the present arrangements for press self-regulation have been effective.
- Chapter 6 describes in more detail the functions and powers which would be required for a statutory press complaints tribunal.

- Chapter 7 reconsiders the criminal offences proposed by the Privacy Committee to provide better protection against the most blatant forms of physical intrusion. It also considers whether a new statutory tort of infringement of privacy should now be introduced. It also considers the application of the Data Protection Act to the press, and the interception of telecommunications.
- Chapter 8 contains my conclusions.

Acknowledgements

1.14 The number of written submissions made to this Review was more than double the number of submissions made to the Privacy Committee. Many of those submissions were of considerable length and went into considerable detail. It was quite plain to me that all who had prepared submissions had gone to considerable trouble and effort. I am grateful to them all.

1.15 I have been very greatly assisted in my task by an able Secretariat. Robert Eagle has led a team of three: himself, Christine Knox and Norma Johnson. Together they have helped me to analyse the very considerable body of evidence which I received, and they have shown themselves to be highly efficient and effective administrators. I am grateful to each of them.

1.16 The Government promised a review of the performance of the Press Complaints Commission, once it had been in operation for 18 months. I am glad that it is has been possible to complete this Review almost within a further six months.

2 Resumé of the Privacy Committee's Report

Introduction

2.1 In the Parliamentary Session 1988-89, two Private Members' Bills were introduced into Parliament. One related to the protection of privacy, the other to providing a right of reply. Neither proposal was new. Similar Bills had previously been before Parliament. But this time there was a difference. Both Bills were given second readings. Both completed their Committee stages in the House of Commons. Both attracted considerable cross-party support. And both demonstrated a level of parliamentary and public concern, about unwarranted intrusions, by the press, into the private lives of individuals.

2.2 In April 1989 the Government invited me to chair an Inquiry into Privacy and Related Matters. The Committee's terms of reference were these:

'In the light of the recent public concern about intrusions into the private lives of individuals by certain sections of the press, to consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press and to improve recourse against the press for the individual citizen, taking account of existing remedies, including the law on defamation and breach of confidence; and to make recommendations'.

2.3 Two points are worth emphasising. First, the Inquiry was specifically restricted to the press: it did not extend to other parts of the media. Secondly, the terms of reference presumed 'public concern', though it was left to the Committee to assess the nature and level of that concern and, indeed, whether that concern was justified.

2.4 The evidence which the Privacy Committee received was wide-ranging. Several press witnesses accepted that the press had not behaved well in the recent past. But they provided the Committee with detailed analyses of press practice and drew the Committee's attention to the constraints which already existed, and the remedies which were already available. Many argued for press freedom to investigate wrong-doing. But, by contrast, many members of the public advocated further restrictions on the press, including recompense, and a variety of punishments for journalists and editors.

2.5 The Report of the Committee was unanimous. It recognised the balance to be struck between freedom of expression and an individual's right to privacy. The Committee acknowledged that freedom of expression was fundamental in a democratic society, but concluded that this could not be at the expense of other important rights, including an individual's right to privacy.

Recommendations

2.6 The Committee made a number of recommendations (Appendix B). They formed an overall package. That package can be summarised in the following way:

- (i) any new means of redress needed to be carefully targeted, and should not range more widely than was necessary to meet existing gaps in protection;
- (ii) in the light of that, the introduction of any new wide-ranging statutory civil right of 'infringement of privacy', although practicable, would not then be appropriate;

- (iii) the most blatant forms of physical intrusion—practices involving door-stepping, bugging, and the use of long-range cameras—should be outlawed;
- (iv) the existing statutory restrictions on reporting should be strengthened so as to provide added protection for children and the victims of sexual offences;
- (v) the press' own arrangements for voluntary self-regulation should be revised, and strengthened as greatly as possible by the introduction of a new Press Complaints Commission; and
- (vi) if the press failed to demonstrate that non-statutory self-regulation could be made to work effectively, a statutory press tribunal for handling complaints should be introduced.

Press Complaints Commission

2.7 The Report contained 13 recommendations concerning the proposed Press Complaints Commission. The first was that the press should be given one final chance to prove that voluntary self-regulation could be made to work. This recommendation was accepted and led to the now well-known statement by Mr David Mellor QC MP, the then Home Office minister with responsibility for press matters, that the press was “drinking in the last-chance saloon”. The second recommendation, also accepted, was that the Press Council should be disbanded and replaced with a Press Complaints Commission.

2.8 A further eight recommendations set out the role of the Press Complaints Commission:

- (i) Rather than pursuing the separate function of defending press freedom, the Commission should concentrate on providing an effective means of redress for complaints against the press.
- (ii) The Commission should be given specific duties to consider complaints both of unjust or unfair treatment by newspapers or periodicals and of unwarranted infringements of privacy through published material or in connection with the obtaining of such material.
- (iii) It should publish, monitor and implement a comprehensive code of practice for the guidance of both the press and the public.
- (iv) It should operate a hot line for complainants on a 24-hour basis.
- (v) It should, in certain cases, include a recommendation that an apology be given to the complainant. The precise form of the apology, including whether it should be given publicly or privately, could also be prescribed. Where a complaint concerned a newspaper's refusal to give an opportunity to reply to an attack made on a complainant or to correct an inaccuracy, the Commission should be able to recommend the nature and form of reply or correction including, in appropriate cases, where in the paper it should be published.
- (vi) It should have an independent chairman and no more than 12 members, with smaller sub-committees adjudicating on complaints under delegated powers.
- (vii) It should have clear conciliation and adjudication procedures designed to ensure that complaints were handled with the minimum of delay. Whenever practical, it should first seek conciliation. There should also be a fast track procedure for the correction of significant factual errors. The Commission should also have a specific responsibility and procedure for initiating inquiries whenever it thought it necessary.
- (viii) It should not operate a waiver of legal rights.

2.9 The Privacy Committee made three further specific recommendations concerning appointments, release of adjudications and finance:

- (i) Appointments to the Press Complaints Commission should be made by an Appointments Commission with explicit freedom to appoint whoever it considered best qualified. The Appointments Commission itself should be independently appointed.

- (ii) Complaints committees should have delegated power to release adjudications, subject to a right of appeal for either party to the full Press Complaints Commission before publication.
- (iii) If the industry wished to maintain a system of non-statutory self-regulation, it must demonstrate its commitment, in particular by providing the necessary money for setting-up and maintaining the Press Complaints Commission.

A package

2.10 I should stress that the Privacy Committee saw the 32 recommendations in its Report as a package. Although the Privacy Committee intended that some recommendations would be brought into effect only if other recommendations failed to achieve their intended purpose, the Privacy Committee did not make its recommendations as a series of options from which a selection could be made.

Misunderstandings

2.11 There are a number of points on which commentators appear to have misunderstood the Privacy Committee's Report. They appear principally to be these:

- (i) The Privacy Committee did not recommend the establishment of the Press Complaints Commission as an alternative to the introduction of the proposed criminal offences (and the associated civil remedy). The two were to be complementary. The criminal offences were designed to provide better protection against the most blatant forms of physical intrusion. The Press Complaints Commission was a body which was intended to have a much wider remit.
- (ii) The proposed criminal offences would not apply, as has been suggested, only to journalists. True it is, they would only apply where there was an intent to obtain the material 'with a view to its publication'; but, within that limitation, the offences would be of general application, and could be committed by anyone who made the physical intrusion.
- (iii) The Committee did not suggest, and would not have suggested, that the Press Complaints Commission should have no regard to press freedom. Rather, the Committee concluded that the Press Complaints Commission would be serving press freedom better if it concentrated on the maintenance of proper standards than it would if it also acted as an overtly campaigning body for press freedom.
- (iv) It was not the Committee's view, as has been suggested, that statutory regulation would result in Government interference with the press.
- (v) It was not the Committee's view, as has also been suggested, that a statutory tort of infringement of privacy was impracticable: its view was simply that it was not *then*, and as part of the Committee's package, appropriate.
- (vi) It was the Government, not the Committee, which specified the 18-month trial period for the Press Complaints Commission.

Self-regulation

2.12 Strengthening *self*-regulation was at the very heart of the Committee's recommendations. The Committee did not under-estimate the difficulties for the press in setting-up, voluntarily, an effective system of self-regulation, and then making it work in practice. The practical difficulties were formidable. The press is not a profession. The classic statement of the free-market view of newspapers, made some years ago now by W P Hamilton of the *Wall Street Journal*, is worth recalling. He said:

"A newspaper is a private enterprise, owing nothing whatever to the public. It is therefore affected with no public interest. It is emphatically the property of the owner, who is selling a manufactured product at his own risk".

2.13 Further, as the *Financial Times* pointed out in June 1990, ‘Nobody is compelled to buy newspapers. It is a competitive market’. So indeed it is. But, as the Privacy Committee’s Report said, ‘All rights’—and, I would interpose, ‘including the right to manufacture and sell newspapers’—‘carry responsibilities, especially when those exercising them have the potential to affect other people’s lives’.

2.14 Effective self-regulation, if it could be achieved, would, I believe, be preferable to any form of statutory regulation. The problem is how to achieve it. The Privacy Committee’s Report suggested, in effect, that the press must accept that the restraints necessarily involved were for the good of the industry as a whole; and that any short-term commercial advantage, gained by a prurient scoop by one paper, could only lead to loss in the long-term for all.

Press Council

2.15 The Press Council had had a protracted and difficult birth. It had then failed to implement recommendations made by various commissions and committees. Perhaps because the press insisted that it should be so, emphasis had always been placed on the maintenance of press freedom. The exercise of control over journalistic behaviour had always been placed second. By 1989 the Press Council seemed to have lost public confidence. In particular, three things had happened:

- (i) The National Union of Journalists had withdrawn from the Press Council at the beginning of the 1980s (and did not rejoin until 1990). At the time of its withdrawal, the Union had announced that, in its view, the Press Council was ‘incapable of reform’.
- (ii) When rulings of the Press Council had been reported in the press, there had been instances of those rulings having been ridiculed in the press and dealt with in a contemptuous fashion. When the press treated its own adjudicatory body in this way, something must have gone seriously wrong.
- (iii) The industry had failed to provide the Press Council with the funds necessary to do its job properly; and when this happened, it could only be a question of time before the regulators would inevitably fall down on the job they had been asked to do.

2.16 The material which was made available to the Privacy Committee included a catalogue of criticisms of the Press Council. It was said that it was ineffective as an adjudicating body; that it was not regarded as independent; that there was an inherent conflict between its roles as a defender of press freedom and as an impartial adjudicator; that the procedures were slow and cumbersome; and that there was a lack of effective sanctions.

One last chance

2.17 The Privacy Committee took the view that, if there were to be a voluntary body, through which journalistic standards were to be maintained, that body should provide means of redress which were as simple, informal and speedy as was practicable, whilst at the same time remaining fair. Such a body should concentrate on the maintenance of proper standards, rather than defending the freedom of the press. Indeed, the Privacy Committee concluded that it would, in that way, be serving press freedom better than it would if it also acted as an overtly campaigning body for press freedom. Finally, the Privacy Committee concluded that although voluntary self-regulation should be given one last chance to prove that it could be made to work, a break from the past was needed, and a new body—a Press Complaints Commission—should be set up in place of the Press Council.

2.18 I should, however, draw attention to one particular initiative which was made by the Press Council to put its own house in better order. In the early part of 1989 the Press Council set up its own Internal Review into its role and function. The Internal Review recommended various procedural changes. In

particular, it recommended the publication of a code of practice, the establishment of what was known as a 'hot line' (aimed at forewarning editors against allegations of unjustifiable publication), and quicker handling of complaints. The Privacy Committee took the view that the Internal Review had provided a useful starting point, but, perhaps because it could not do so by voluntary agreement, that it did not go far enough, and that a fundamental overhaul was needed.

3 Response to the Report

Response in Parliament

3.1 The Report of the Privacy Committee was completed in May 1990, and made public in June 1990. Its recommendations were accepted in principle by the Government, and welcomed by the Opposition. Speaking in the House of Commons, on 21 June 1990, the then Home Secretary, Mr David Waddington QC MP, said that the Government warmly welcomed the general approach which the Committee had taken in its Report on the delicate issue of balancing privacy for the individual against the maintenance of freedom of expression. The Government were attracted by those recommendations which offered the possibility of an immediate remedy against the worst excesses of the press. The Government accepted them in principle, but careful thought would need to be given to the detailed formulation of the offences and the precise scope of any defence. The Government also welcomed the recommendations for extending reporting restrictions, which fitted well with the measures which the Government was already taking to improve the treatment of victims. This was positively the last chance for the industry to establish an effective non-statutory system of regulation. If a non-statutory commission were established, the Government would review its performance after 18 months of operation to determine whether a statutory underpinning was required. If no steps were taken to set up such a commission, the Government, albeit with some regret, would proceed to establish a statutory framework, taking account of the Committee's recommendations. It was now up to the press to take up the challenge that the Committee had presented to it. He was confident that the response would be a positive one.

3.2 Mr Roy Hattersley MP, said that the Opposition gave an unqualified welcome to the Report's positive proposals and would happily co-operate in their implementation. The Report was based on the principle that private individuals had a right to maintain their privacy. Sometimes public figures might have to accept the consequences of their status; but private citizens were entitled to absolute protection against intruders, and the Report at least showed the way in which that protection could be provided. The Opposition specifically offered its support for the proposal that the press should be given 'one final chance' to prove that voluntary regulation could be made to work. But that also required parallel support for insistence that if the press failed to demonstrate that non-statutory self-regulation could be made to work effectively, a statutory system should be introduced. The Home Secretary, he said, had expressed the belief that newspapers would respond to this one last chance. He had his doubts. That was why the second recommendation—the introduction of statutory regulation by an official body—was absolutely essential if the year of grace was ignored and if the press did not mend their ways. All members should be determined to defend the freedom of the press: freedom against Government, freedom against powerful corporations and freedom against corruption. He did not want to see the curtailment of legitimate investigative journalism, but he also believed in another freedom: the right of individuals to live in privacy and peace. The Report struck the proper balance between the two objectives, and he hoped that both sides of the House could work together to bring those two objectives about.

3.3 During questions in the House of Commons, Members of Parliament expressed a wide range of views about the Report. Mr Ivan Lawrence MP said that time and again the press had been given a chance to put their house in order, and time and again sections of the press had wilfully flouted that requirement; and he asked whether the giving of this last chance was not unduly generous to the press and unduly unprotective to the liberty of the individual. He asked for urgent consideration to be given to making the Press Complaints Commission

statutory from the start. Mr Robert Maclellan MP recognised the need to ensure that the presumption of an individual's right to privacy was strengthened and that it was displaced only by a genuine and direct public interest; but he asked for reconsideration of the proposals to set up specific crimes in the light of previous representations that the creation of a law of criminal trespass would be difficult to achieve in practice. He also asked who would now be entrusted with the protection of press freedom. Mr John Gorst MP welcomed all the recommendations of the Report, but had misgivings about the central proposition on which the Report was based, namely that freedom of expression should take precedence over protection of privacy. Mr Joe Ashton MP said that the tabloids would laugh at the announcement and would not take a blind bit of notice of it, simply because there would be no sanctions: the press barons would totally ignore the Report.

3.4 Mr William Cash MP said that there had been serious invasions of privacy. In the circulation war, there had been a considerable incentive for people to try to make money out of invasions of privacy. Ought Parliament not to ensure that the people who would run the new independent complaints commission had the power to award compensation to victims? Mr Tony Worthington MP welcomed a great deal of what was contained in the Report. He too suggested that when the Press Complaints Commission was set up it should have the power to award compensation. Sir Dudley Smith MP urged the Home Secretary to incorporate the suggestions and recommendations in the Report into a Bill for the next Session; and he sought a promise that one last chance really was one last chance and that there would be no fudging at the end of the day. Dame Elaine Kellett-Bowman MP was concerned that some of the recommendations in the Report seemed weak. Mr John Cartwright MP (who had been a member of the Privacy Committee) asked the Home Secretary to make it absolutely clear to the press that this was the end of the road, and that, if they did not put their house in order, statutory regulation would follow, and that they would have absolutely no-one to blame but themselves. Mr Kenneth Hind MP described the Report as well-balanced: it showed the need to improve standards of journalism, and the need to protect the individual: and that it was appropriate to give a free press one last chance to put their house in order. Mr David Winnick MP asked whether the House was not entitled to be pessimistic; and that until there were proper statutory regulations, and until some of the worst offenders were dealt with, there would be no improvement. Was not the House entitled to believe that, as there had been no improvement over the past 40 years, unless real action was taken, there was no chance of progress in the next 40 years? Mr David Sumberg MP said that decent, honourable and reputable journalists, who were the vast majority, had nothing to fear from the proposals. Mr Hattersley, noting the scepticism there was about the Report, suggested that it would help to concentrate minds if the Government held an early debate on a motion making clear that the statutory remedy would be applied if the one last chance were not taken.

Response of the press

3.5 The Privacy Committee's Report met with mixed reactions from the Press. These ranged from vociferous opposition to encouraging support for the recommendations. Mr Hugo Young writing in *The Guardian* said that the report was 'Notably astute, another establishment job. But as an intellectual exercise, it is deplorable, showing how easily politics can overwhelm reason. And as a text for the better protection of the free press it is a disaster'. Other reports in the press suggested that some editors were worried by the criminal offences which were regarded as 'draconian and sinister' and would prevent journalists from investigating 'cheats and fraudsters of which there are many in this country'. Others argued that there was very little recommended that was not already being done. *The Guardian* argued that because 'something had to be done', the Privacy Committee had tried to square too many circles in ways that, in detail, did not quite make sense. It went on to say that the proposals would make commercial survival in the tabloid market appallingly difficult, would produce fewer newspapers and a less free press.

3.6 *The Independent* welcomed the proposals for self-regulation. However, it considered that some proposals needed substantial changes. In particular the proposed code of practice, it argued, gave too little weight to the public interest in publishing news that the persons concerned did not wish to see published. It also commented on the recommendation that there should no longer be a waiver of legal rights, pointing out that newspapers could not be expected to make a defence in front of a voluntary body which could then be used as evidence against them in the High Court. The *Financial Times* argued that by making the transition to statutory control so easy, the Privacy Committee may have done a disservice to press freedom, arguing that controls on the press might be politically popular, but that that did not make them in the public interest.

3.7 Mr Ferdinand Mount, in the *Daily Telegraph*, argued that the Privacy Committee was right to concentrate on physical intrusion, whether by camera, tape recorder or actual foot in the door. He pointed out that the defences contained in the Privacy Committee's report ought to give reasonable cover for legitimate journalism, but would not protect the photographer taking unauthorised pictures of royal sunbathers, or octuplets in their incubators, or a shrunken film star on his deathbed. He concluded that the Committee had produced welcome and (with a bit of revision) workable proposals for the protection of privacy, but considered it a pity that the Committee should have strayed beyond its brief to threaten the introduction of a 'brand of legal censorship the press has not seen since the early 19th century'. Mr Max Hastings, the editor of the *Daily Telegraph*, was reported in the *Daily Telegraph* to have said that few responsible journalists would find very much to argue with in the findings of the Privacy Committee's report. He felt, however, that the difficulties of defining offences against acceptable behaviour in a form that could be codified into law was somewhere between "very great and insuperable". The *Daily Telegraph* also reported Mr Robert Maxwell as having said that his Group's response would be "Measured, not manic. Fundamental, not frivolous."

Other responses

3.8 Reactions from other quarters were also mixed. Professor B S Markesinis, Denning Professor of Comparative Law in the University of London, praised the pragmatic nature of the Privacy Committee's recommendations which he believed would enlarge the protection of deserving victims without requiring a Privacy Bill to be placed before Parliament. He was satisfied, however, that it would be possible to define a statutory tort of infringement of privacy and regretted that the Committee did not support the introduction of such a tort. He was unconvinced that press self-regulation would work in practice and contended that the Committee's preference for new, narrow, criminal sanctions might not have removed altogether the need for a wider statutory tort of invasion of privacy.

3.9 Professor E M Barendt, Goodman Professor of Media Law at University College London, maintained that self-regulation was probably not the correct way to protect the individual citizen's right to privacy and his right of reply. He argued for a statutory tort of privacy which would apply to all.

3.10 Sir Louis Blom-Cooper QC in *Epitaph: Critique on Calcutt* contended that the Privacy Committee, in seeking to separate the protection of press freedom from adjudicating on complaints of breaches of journalistic ethics, had, in effect, negated the *raison d'être* of the Press Council and had defied the logic and practice of consonant functions.

3.11 Geoffrey Robertson QC and Andrew Nicol, in their book *Media Law*, 3rd edition, 1992, Penguin Books, concluded that the proposed criminal offences were misconceived. Their view was that law should not be used actively to suppress publication of the truth. They considered that an effective remedy—the right to bring a civil action, legally aided where appropriate, and to obtain compensation—was precisely what English law did not, at present, offer. Further, they suggested that if the code of practice operated by the Press Complaints Commission were made the basis of a statutory tort, so that any

breach which could not be justified on public-interest grounds would render the newspaper liable to damages, a significant advantage would have been achieved in the protection of human rights in the United Kingdom.

3.12 The National Union of Journalists suggested that it was the concentration of ownership and the pursuit of circulation at all costs which had degraded public taste and debased the professional standards of popular journalism. It claimed that the Privacy Committee's proposals had failed to strike a balance between the public's right to information and the citizen's right to privacy and called for a body which combined ethical regulation with the defence of press freedom.

3.13 The Press Complaints Commission, in its first annual report, published in May 1992, observed that the recommendations of the Privacy Committee were more favourable than the press could reasonably have expected. It took the view that, had the Committee recommended immediate legislation, Parliamentary opinion would have been likely to compel the Government to intervene directly in the regulation of the press at that time. It acknowledged that the Committee had handed over to the press the responsibility for its own fate.

Present position on recommendations

3.14 The present position on the recommendations of the Privacy Committee is this:

- (i) No action has yet been taken on the proposed amendment of the law to provide better protection against the most blatant forms of physical intrusion (recommendations 1-4).
- (ii) Of those recommendations concerning restrictions on press reporting (recommendations 5-8), those made about the anonymity of victims of sexual assault have been given effect, with minor modifications, in the Sexual Offences (Amendment) Act 1992. The other reporting recommendations remain under consideration.
- (iii) Recommendation 9 recommended that a statutory right of reply should not be introduced.
- (iv) Recommendation 10 recommended that a tort of infringement of privacy should not *then* be introduced.
- (v) Recommendations 11-23 concerned the Press Complaints Commission. The action taken in this respect is described below (paragraphs 3.16—3.93).
- (vi) Recommendations 24-32 were to be acted on only if non-statutory self-regulation failed.

The Press Complaints Commission

3.15 The following paragraphs set out in broad terms what has happened in respect of the recommendations of the Privacy Committee relating to the setting-up of a Press Complaints Commission (recommendations 11-23).

Pressbof

3.16 For some time prior to the publication of the Privacy Committee's Report, there had been concern within the industry over the budgeting difficulties of the Press Council and the high proportion of trade association expenditure represented by the contributions from publishers who were not members of one of the Press Council's constituent bodies. This had resulted in a series of meetings of representatives of the six trade associations in the first half of 1990 and a decision to set up a body, modelled closely on the Advertising Standards Board of Finance, and aimed at assuming responsibility for Press Council funding from 1 January 1991.

3.17 At a meeting on 25 June 1990 the trade association representatives noted the acceptance by the Government of the Privacy Committee's Report. This gave added significance and urgency to the plans which were being made. It was agreed that the new finance body should be styled 'The Press Council Board of

Finance Limited' ('Pressbof'). An interim secretary was appointed and steps were initiated to secure the appointment of a chairman. (The full name of Pressbof was later changed to 'The Press Standards Board of Finance Limited').

3.18 Pressbof is a press industry body. The memorandum and articles of association for Pressbof were approved in October 1990 and the company was registered on 1 November 1990. The membership of the company and the directors consisted of representatives of the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers Association, the Scottish Daily Newspaper Society, the Scottish Newspaper Publishers Association and the Association of Free Newspapers.

3.19 The Association of Free Newspapers (subsequently re-named 'The Association of Free and Weekly Newspapers') was wound up during 1991 and its representative resigned from Pressbof on 31 December 1991. The board considered that free newspapers were adequately represented by the Newspaper Society and the Scottish Newspaper Publishers Association and that no additional representation was necessary.

3.20 The meetings of the trade association representatives and subsequently of the Pressbof directors became the focal point for collective action by the industry in considering the Privacy Committee's recommendations.

3.21 Exploratory discussions were held between the Newspaper Publishers Association and the Newspaper Society in July and August 1990, at which general agreement was reached that there should be a single Press Complaints Commission for the UK. These meetings were subsequently expanded to include representatives from other sectors of the industry and constituted as an editorial committee under the aegis of Pressbof.

3.22 Although the Privacy Committee had recommended that the industry be given a year to bring the new regime into operation, the industry felt it desirable to have the Press Complaints Commission operating as quickly as possible, and this view was reinforced by indications that publishers would not wish to continue financing the old Press Council after the end of 1990. It was therefore decided to do everything possible to have the Press Complaints Commission operating from 1 January 1991.

3.23 The significant points of agreement reached by the editorial committee were these:

- (i) Dissolution of the Press Council was to take place on 31 December 1990 and responsibility for adjudication on complaints was to be assumed by the Press Complaints Commission from 1 January 1991.
- (ii) The Press Complaints Commission was to concentrate on resolution of complaints and was not to become involved in press freedom issues (although the adjudication process was to have regard to general freedoms).
- (iii) The remit of the Press Complaints Commission was to be drawn from the wording of sections 54 and 55 of the Broadcasting Act 1981 (which described the purpose and functions of the Broadcasting Complaints Commission).
- (iv) The code of practice was to be drawn up by an editors' working party (a 'Code committee') and the code was to be discussed with the chairman designate of the Press Complaints Commission before finalisation.
- (v) A hot line was to be established.
- (vi) Publications were to be encouraged to report the launching of the Press Complaints Commission, the code of practice and publishers' support for them.
- (vii) Recommendations for apologies or corrections were acceptable, subject to understanding the need to protect publishers' legal position.

- (viii) The chairman of the Press Complaints Commission, being a person of national standing, otherwise not connected with the press, was to be appointed through Pressbof.
- (xi) To take account of the likely volume of work and to avoid conflicts of interest, there should be 16 members of the Commission, of whom nine should be press members.
- (x) The press members were to be working editors.
- (xi) An Appointments Commission was to be formed consisting of the Press Complaints Commission chairman, a senior newspaper person (probably the chairman of Pressbof) and an independent person of stature.
- (xii) Emphasis was placed on the need to refer complaints to publications for possible resolution in the first place.
- (xiii) The Press Complaints Commission should not itself initiate inquiries.
- (xiv) General procedures, as recommended by the Privacy Committee, were otherwise acceptable.
- (xv) A waiver was not to be required, but the Press Complaints Commission must recognise the right of publishers to protect their legal position.

Press Complaints Commission chairman

3.24 The Privacy Committee had taken the view that the chairman of the Press Complaints Commission would, along with the other members of the Commission, be appointed by an Appointments Commission, which would itself be independent of the industry, and which would itself be appointed by a person who was also independent of the industry. The industry, however, had other ideas. It was decided that Pressbof, in addition to its responsibility for finance, should also be responsible for the appointment of the Press Complaints Commission chairman. In adopting this practice, the industry was following a pattern set by the Advertising Standards Authority (ASA). This, it has been pointed out, had been successful with a succession of distinguished chairmen—Lord Tweedsmuir, Lord Drumalbyn, Lord Thomson of Monifieth, Lord McGregor of Durris and the newly-appointed Mr (now Sir) Timothy Raison MP.

3.25 Following consultation with the different sectors of the industry, Pressbof agreed to invite Lord McGregor of Durris to be the first chairman of the Press Complaints Commission. It was recognised that he had, through his chairmanship of the third Royal Commission on the Press (1974-77), a thorough knowledge of the press and that he was, through his chairmanship of the ASA, uniquely qualified to lead the new body.

3.26 At a meeting on 10 October 1990 the Home Office was advised of the industry's intention, and the appointment was subsequently welcomed in a statement by the then Home Secretary, in which he acknowledged that Lord McGregor possessed the right mixture of experience and independence of view.

Press Complaints Commission premises

3.27 In the light of the time-table which the industry had set itself, Pressbof considered that the Press Complaints Commission should, at least in the short-term, take over the Press Council premises in Salisbury Square, in London.

3.28 Lord McGregor, however, expressed the view that a move from Salisbury Square would help to disassociate the Press Complaints Commission from the old Press Council. Enquiries were made regarding possible alternative premises, but with the difficulties of the London property market at the time, Pressbof said that the industry should not be asked to meet the costs of two sets of premises and that any arrangement made for new premises must be coupled with the disposal of the premises in Salisbury Square. In the result the Press Complaints Commission remained at Salisbury Square, though considerable re-furbishment took place.

Press Complaints Commission staff

3.29 The Privacy Committee's Report had made it clear that the Press Complaints Commission should not be tied to taking over the existing staff of the Press Council. But the industry was determined that a complaints procedure had to be operational in January 1991 and there was, in its view, a valid reason for transferring the Press Council's staff to the Press Complaints Commission, recognising that the Commission would be able to make any changes considered necessary.

3.30 The industry was also conscious that although there had been misgivings about the effectiveness of the Press Council, no complaints had been levelled at its director. It believed that the director could make a vital contribution to the self-regulatory regime if he were offered a similar appointment in the Press Complaints Commission, and this was done.

3.31 Since that time there has, however, been a substantial change of staff (including a change of director).

Appointments Commission

3.32 One of the central recommendations of the Privacy Committee was that the Press Complaints Commission should be independent of the industry and it should be seen to be independent of it. Members of the Commission should accordingly be appointed by an independent Appointments Commission which should itself be independently appointed. The Committee suggested, as a possibility, that the Lord Chancellor might appoint the independent Appointments Commission. But, at a meeting between representatives of the Newspaper Society and the Home Office on 25 July 1990, it was apparently made clear that the Government would only move on the appointment of an Appointments Commission if the industry asked it to do so. It was the view of the industry that, if this were truly the last opportunity for self-regulation, the Government should not become involved. But if the Lord Chancellor (because of his political involvement) was unacceptable, no thought was apparently given to finding some alternative person who would be seen as being independent. Instead, it was agreed that the Appointments Commission should consist of the chairman of the Press Complaints Commission (who had himself been appointed by Pressbof), the chairman of Pressbof and a third member of public stature who was independent of the press and who would be nominated by the chairman of the Press Complaints Commission. (Lord Colbrook (formerly Mr Humphrey Atkins MP) subsequently accepted an invitation to serve as the independent member).

3.33 The Appointments Commission, as set up, thus differed significantly from the Appointments Commission which the Privacy Committee had recommended. As set up, the Appointments Commission was, effectively, the creature of the industry. However independently its members may in fact have discharged their duties, the Appointments Commission cannot be perceived by the public as a body which is itself independent of the press. I do not doubt it commands the confidence of the industry, but it cannot, in my view, command the confidence of the public.

Press Complaints Commission membership

3.34 The Privacy Committee expected the majority of the members of the Commission to have had experience at the highest level of the press. The only guidance Pressbof gave to its Appointments Commission was that the press members should be working editors and that the appointments should have regard to the diverse and distinct facets of the press. Pressbof was advised of the Appointments Commission's wish to appoint Sir Edward Pickering and Mr David Chipp as members of the Press Complaints Commission so that the chairman and lay members might have the assistance and advice of respected and distinguished figures still active in the industry, but no longer carrying daily editorial responsibilities. Pressbof responded that such appointments were within the powers of the Appointments Commission, but suggested that,

although the two individuals were no longer working editors, they should still be regarded as press members and that the Appointments Commission should accordingly consider the appointment of an additional lay member to maintain the balance between lay and professional members. No such additional member has, in fact, been appointed. At the time of my review the Commission consisted of 15 members, a further vacancy being caused by the death of Sir Richard Francis in June 1992. Nine of the 15 members were actively involved in the press, or had press backgrounds. Only six appeared to be independent of press involvement. In the debate which took place in the House of Lords on 1 July 1992 Lord Colnbrook (who is a member of the Commission) is recorded as having accepted that those who were not editors were nevertheless connected with the press.

3.35 The Privacy Committee took the view that, once the press members of the Commission were no longer representative of constituent bodies, the argument for precise parity between press and lay members, became less powerful; but, as I have already explained, it was not contemplated that the appointment of members would be made by a body which was not itself independent of the industry. However independently the members of the Commission may in fact have discharged their duties, the Commission cannot be perceived by the public as a body which is independent of the press. Again, I do not doubt that the Commission commands the confidence of the industry, but it cannot, in my view, command the confidence of the public. And the present imbalance between press and lay members only serves to aggravate the position.

Press Complaints Commission remit

3.36 It was decided that the Press Complaints Commission should be constituted as a company limited by guarantee. Draft memorandum and articles of association were prepared, drawing from the Privacy Committee's recommendations and from broadcasting legislation. One of the objects of the Press Complaints Commission, as originally drafted, was "for the purpose of ensuring that the press of the United Kingdom maintains the highest professional standards". The memorandum and articles were discussed with the chairman-designate and director-designate of the Press Complaints Commission. The memorandum and articles were subsequently accepted by the Press Complaints Commission.

3.37 By a special resolution of 24 April 1991, one significant amendment was, however, made. The Privacy Committee had recommended that the Commission, rather than pursuing the separate function of defending press freedom, should concentrate on providing an effective means of redress for complaints against the press. The amendment, added to the objects of the Commission, was, however, in these terms: "And having regard to generally established freedoms including freedom of expression and the public's right to know, and defence of the press from improper pressure".

3.38 On the title-page of the Commission's first annual report, published in May 1992, the second duty of the Commission was expressed in these terms: "The duty to promote generally established freedoms including freedom of expression and the public's right to know, and the defence of the Press against improper pressure from Government and elsewhere".

3.39 This appeared to me to run contrary to the recommendations of the Privacy Committee. Lord McGregor told me, however, that it was not part of the Commission's responsibility to be a campaigning body. It was proper for the Commission to have regard in the course of its work to the need for press freedom, but it would not campaign for that purpose.

3.40 On 18 May 1992, however, there appeared an article in the *UK Press Gazette*, with the headline "Calcutt test passed—now for Press Freedom", in these terms:

"(The Press Complaints Commission) is now ready to widen its role and tackle issues of Press freedom. In direct opposition to the very body to which it owes its existence, the Calcutt Committee, it is taking on a wider

lobbying function than its initial brief to merely attend to readers' complaints . . . (Its first annual report) declares its role in promoting the high ideals of Press freedom that Calcutt said should be beyond its remit".

Lord McGregor is recorded in this article as having said, "I don't agree with the distinction that the Calcutt Committee drew between a body dealing with complaints and a different body with Press freedoms".

3.41 Lord McGregor, however, has explained to me that this wholly misrepresented his views, that he did not use the words attributed to him, and that he raised the matter with the editor of the *UK Press Gazette*. Indeed, he went so far as to say that he agreed with the view which the Privacy Committee had taken with regard to the role for press freedom in the work of the Press Complaints Commission. Unfortunately, nothing further appeared in the press, and the public perception of the work of the Commission may well be different.

Code of practice

3.42 The Privacy Committee had recommended (recommendation 15) that the Press Complaints Commission should *itself* publish, monitor and implement a comprehensive code of practice. Instead, the industry's Code committee drafted the code of practice. The committee had before it the code proposed by the Privacy Committee, a code produced by the national newspapers and the code prepared under the Press Council Internal Review. The final draft was approved by the trade associations on behalf of the industry and submitted to Lord McGregor for comment. He asked that the code should state that it applied in the spirit as well as in the letter, and this was accepted.

3.43 The Third Royal Commission on the Press (1974-77), chaired by Lord McGregor, had suggested that the code of practice should be drawn up by the Press Council, and not by the industry. Lord McGregor told me, however, that he had acquired more experience of self-regulation since then, and was now of the view that it was better if the industry framed the code. But whether that is so must, in my view, depend to a large extent on the terms of the industry's code, and whether it holds the balance fairly between press and public.

3.44 It was agreed that the code should be subject to regular review. If the Press Complaints Commission considered that the code was inadequate, it could refer the matter to Pressbof for Pressbof to convene a meeting of the Code committee to consider possible revision. Representatives of Pressbof also explained to me that it was open both to the industry and to members of the public to suggest changes; and the monthly report of the Commission for October 1992 invites the public to submit comments or suggestions regarding the content of the code. The Matthew Trust told me that they had experienced difficulty in this respect; but the representatives of Pressbof told me that there were no proper grounds for this concern.

3.45 The Code committee was re-convened at the end of 1991 to consider any points which had arisen during the year. The Press Complaints Commission was invited to submit any comments resulting from its experience in adjudications. This resulted in two amendments to the code:

- (i) An addition was made to the opening: "Any publication which is criticised by the PCC under one of the following clauses is duty bound to print the adjudication which follows in full and with due prominence".
- (ii) A new wording was formulated for clause 10: "Unless it is contrary to the public's right to know, the press should generally avoid identifying relatives or friends of persons convicted or accused of crime".

3.46 The Code committee met again in November 1992 to consider whether any further amendments were necessary. As a result, draft proposals relating to financial journalism are currently being considered.

3.47 The industry's code of practice (as amended) follows, in general outline, the code proposed by the Privacy Committee. But there are several significant differences. Some of these differences are considered in paragraphs 3.48—3.61 below. For convenience, the Committee's proposed code and the industry's code (as amended) are set out, in parallel texts, in Appendix C.

3.48 **Right to know (Opening).** The Privacy Committee's proposed code contained no reference to the public's 'right to know'; but the industry's code provides that the press has a duty 'to safeguard the public's right to know'. Pressbof told me that this had been included to provide balance.

3.49 **Opportunity to Reply (Clause 2).** The Privacy Committee's proposed code, entitled 'Right of Reply', required individuals and organisations to be given a 'proportionate and reasonable opportunity to reply to criticisms or alleged inaccuracies which are published about them'. The industry's code, however, provides individuals and organisations with an 'opportunity' (rather than a 'right'), and one which is more narrowly drawn, so providing less protection, than that which had been proposed. In the industry's code an opportunity for reply need only be given where there is an actual (as opposed to an alleged) inaccuracy, and it provides no opportunity in the case of criticism. Further, 'a fair opportunity' is substituted for 'a proportionate and reasonable opportunity to reply'.

3.50 **Public interest (Clauses 4,6,7,8,10).** The different treatment of 'public interest' considerations by the Privacy Committee and by the industry impinges on much of the code, and it is probably the most significant difference. In clauses 4 (privacy), 6 (misrepresentation), 7 (harassment) and 8 (payment for articles) and, by implication, clause 10 (innocent relatives and friends), the industry's code significantly widens the Privacy Committee's proposals as they related to 'public interest', and so reduces an individual's protection. The Privacy Committee deliberately and explicitly confined 'public interest' considerations to certain specific matters. It confined them to:

- (i) 'detecting or exposing crime or seriously anti-social conduct',
- (ii) 'protecting public health or safety', or
- (iii) 'preventing the public from being misled by some public statement or action of that individual'.

It deliberately avoided a generalised 'public interest' consideration.

3.51 The Code committee was plainly unwilling to follow the Privacy Committee's recommendation. To give one example, in contrast to the Committee's proposal, clause 4 of the industry's code of practice provides that intrusions and enquiries into an individual's private life without his or her consent are not generally acceptable and that publication can only be justified 'when in the public interest'. 'Public interest' is to 'include' the specific matters set out in the Privacy Committee's proposed code, but may extend beyond them. Further, in the industry's code 'or serious misdemeanour' has been added to 'crime'; and 'statements' are not to be restricted to 'public statements', as the Privacy Committee had proposed. The Privacy Committee's proposed clauses 6 (misrepresentation), 7 (harassment), and 8 (payment for articles) were similarly treated in the industry's code.

3.52 In response to my concern at these significant differences, Lord McGregor pointed out to me that the code could be changed at any time, and expected that it would be reviewed at intervals. He explained that the Commission was getting into the habit of producing guidelines in the form of editorials in each of its monthly reports, and that these editorials pooled together the result of adjudications to produce guidance to the press on the way the spirit of the code was being interpreted by the Commission. I accept, of course, that this is so. Changes of the code have indeed been made and guidance has indeed been given. But the different treatment of 'public interest' is more fundamental. It seems to me unlikely that Pressbof, left to itself, would ever be willing to follow the Privacy Committee's approach to 'public interest' considerations.

3.53 Privacy (Clause 4). The Privacy Committee's proposed code spelt out that 'an individual's personal life includes matters of health, home, personal relationships, correspondence and documents but does not include his trade or business'. The industry's code is silent about what is meant by 'an individual's private life'. The industry's code contains nothing similar to the Declaration of Principle made by the Press Council in 1976, although the Commission has told me that, in practice, it follows the Declaration. (This Declaration had set out that the publication of information about private lives was legitimate only where the public interest could legitimately be said to override the right to privacy. It had recognised that 'of interest to the public' was not synonymous with 'in the public interest', and had pointed out that entry into public life did not disqualify an individual from his right to privacy. The declaration had also covered invasion of privacy by deception, eavesdropping or technological methods and the obtaining of news and pictures, pointing out that in each case there should be a legitimate public interest.)

3.54 Further, the Privacy Committee's proposed code covered not only 'publishing material about the personal lives of individuals' without consent, but also 'making enquiries' about them. The industry's code is less restrictive of the press. 'Intrusions and enquiries into an individual's private life without his or her consent are not generally acceptable and publication can only be justified when in the public interest'. The industry's code thus draws a distinction between 'making enquiries' and 'publication'. The Commission told me, however, that it had never interpreted this clause as being breached only by publication, and that the Commission had been willing to consider intrusion without there being a published story.

3.55 Misrepresentation (Clause 6). The Privacy Committee's proposed code provided that documents or photographs should be removed only with the express consent of the owner and 'only with an indication that they might be published'. In the industry's code, however, the requirement for 'an indication that they may be published' has been omitted.

3.56 Trespass (Clause 7). The Privacy Committee's proposed code relating to harassment prohibited, *inter alia*, obtaining information or pictures by trespass. The clause in the industry's code omits any reference to obtaining by trespass. Pressbof informed me that the Code committee considered that it might be necessary for a journalist to trespass on private property to obtain information which would ultimately be in the public interest.

3.57 Intrusion into Grief or Shock (Clause 9). The Privacy Committee's proposed code provided that the press should not intrude into personal grief or shock, in particular in the aftermath of accidents and tragedy; that unsolicited approaches to the recently bereaved could only be justified in closely defined circumstances; and that, in those instances, enquiries should be carried out and approaches made with sympathy and discretion. The industry's code simply provides that 'In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion'. Robertson and Nicol in *Media Law*, 3rd edition p.533, have expressed the view that the industry's clause amounts to a rejection of a key clause in the Privacy Committee's proposed code, and suggested that the press was not, as an industry, prepared to hold its hand on these occasions, save to offer 'sympathy and discretion'.

3.58 Innocent Relatives and friends (Clause 10). The Privacy Committee's proposed code provided that the press should not identify relatives or friends of persons convicted or accused of crime unless the reference to them was necessary for the fair and accurate reporting of the crime or legal proceedings. The industry's code, however, is less restrictive of the press. It provides that 'Unless it is contrary to the public's right to know, the press should generally avoid identifying relatives or friends of persons convicted or accused of crime'.

3.59 Interviewing or Photographing Children (Clause 11). The Privacy Committee's proposed code would normally have protected children from being interviewed or photographed in the absence or without the consent of a parent (or other adult in a similar position). The industry's code is less restrictive of the

press. The protection extends only to 'subjects involving the personal welfare of the child'. The Code committee considered the proposed clause to be over-restrictive.

3.60 Victims of Crime (Clause 13). The Privacy Committee's proposed code provided that the press should not, even where the law did not prohibit it, identify victims of sexual assaults or publish material likely to contribute to such identification. The industry's code, however, provides that the press should not identify victims of sexual assault or publish material likely to contribute to such identification, unless, by law, they are free to do so. This achieved precisely the opposite of what the Committee intended. Statutory protection has since been extended (see paragraph 3.14); but the whole point of the code proposed by the Committee was that while, by law, the press was free to publish such information, they should abide by a self-imposed constraint not to do so. Plainly, the industry was not prepared to rein itself in unless and until it was required to do so by legislation.

3.61 Criminal Convictions; and Stories about the Recently-dead (Clause 14 and 16 of the Committee's proposed code). The Privacy Committee's proposed code contained provisions concerning the publication of an individual's criminal convictions, and stories about the recently-dead. Neither of these provisions has been carried forward into the industry's code. In the case of criminal convictions, the Code committee's view was that, since Parliament had legislated, it was up to Parliament to vary its legislation if it so wished.

3.62 The two codes compared. Pressbof has contended that there was no conscious attempt to 'soften' the Committee's proposed code, but simply to make it more practicable and relevant. But it is not as though the Privacy Committee was without members with press experience. In the light of all the evidence available to me, and particularly having regard to the treatment of 'public interest', I regret I cannot accept this contention. In my view the protection for individuals which the Privacy Committee's proposed code would have provided has been significantly reduced by the industry's code; and that code does not hold the balance fairly. The Commission contended that, in practice, any differences were more apparent than real; but that would not be apparent to anyone reading the industry's code, which the Commission encourages the public to do.

Hot line

3.63 The Privacy Committee had recommended (recommendation 16) a hot line procedure which would cover forestalling publication and pursuit by journalists and photographers.

3.64 The Press Council had agreed to implement a hot line, but was wound up before effect could be given to it. The Privacy Committee took the view that this was an imaginative proposal which was well worth developing. In the case of unjustified intrusions into privacy, a hot line would be particularly effective: with publication, the damage is done, and can never satisfactorily be undone. Although it would be open to the person concerned to telephone the editor himself, the voice of the Council would give added weight and authority.

3.65 Pressbof's editorial committee had agreed that a hot line should be established (see paragraph 3.23).

3.66 Further, in the middle of October 1990, it was reported that it had been decided that, subject to confirmation by the industry, the new Press Complaints Commission would be running a 21-hour a day, seven days a week, hot line for people who wanted to object to the imminent publication of an article about them. It was recognised that the hot line procedure needed to avoid falling into the trap of preventing publication by acting as a form of prior restraint. The complaint would be faxed in brief, neutral and factual fashion to the newspaper's editor.

3.67 Nevertheless, the industry's later view was that, at a time when publications and their editors were committed to a code of practice, provision for forestalling publication was unnecessary and would be liable to abuse. As consideration continued, the magnitude of the task appeared to be overwhelming. It was recognised that the identification of journalists and photographers, against whom a complaint of harassment was made, could present major difficulties and the involvement of freelance and foreign journalists would make the issue of warnings extremely difficult. Accordingly, although the Press Council had sought to set up a hot line and although the Privacy Committee had recommended it, the implementation of a hot line procedure was not regarded by the industry as a priority matter and no recommendation was made to the Press Complaints Commission regarding it.

3.68 Lord McGregor was himself opposed to a hot line. On 28 February 1992 he wrote to Sir Frank Rogers, chairman of the Newspaper Publishers Association, saying, *inter alia*, "The Commission will have no truck with prior restraint and have rejected, though not yet publicly, the Calcutt Committee's recommendation that they should operate a 'hot line' ... I regard any attempt to influence editorial judgement in this respect as an unacceptable infringement of the freedom of the press."

3.69 Lord McGregor told me that he did not think a hot line could operate without involving prior restraint. His understanding of the procedure was that a person would telephone to indicate that there was a possibility of the press publishing private information which would be in breach of the code. The Commission could, however, only telephone the editor of the newspaper, to indicate that they had been informed of a possible breach of the code and invite the editor to consider the position carefully. Then, if the paper published and a subsequent complaint were received and upheld, the adjudicating body might feel justified in strengthening its criticism. Lord McGregor considered that such a procedure would inevitably attract large numbers of calls, and that this would lead to a loss of credibility for the Commission.

3.70 Lord McGregor did, however, confirm that the Commission did, on occasion, operate a form of hot line. It would accept calls from Members of Parliament on behalf of their constituents. In some cases Lord McGregor had intervened and had spoken to editors prior to publication.

Third-party complaints

3.71 The Press Council had been willing to receive third-party complaints over a wide range of cases; and it may well be that this contributed to the delays of which witnesses to the Privacy Committee spoke.

3.72 The policy of the Press Complaints Commission has been set out in the editorial of its 13th report (September 1992). The Commission may, at its discretion, consider any complaint from whatever source, which it believes appropriate to the effective discharge of its functions. In practice, the Commission has considered third-party complaints only when it believed that issues substantially affecting the public interest were involved which had not been previously resolved by an interpretation of the code. The statistics relating to third-party complaints for January 1991 to June 1992 are set out in paragraphs 4.9 and 4.10 below.

3.73 Lord McGregor told me that he considered it would not be proper for the Commission to pursue a complaint from a third-party, particularly where that complaint concerned the privacy of some other person. He explained to me that the Commission did, however, accept third-party complaints where those parties were in some way representative of a person or body who might feel unable to make a complaint. In particular, he told me that the Commission accepted complaints from Citizens' Advice Bureaux, and from the Matthew Trust on behalf of mentally-disordered persons. The Commission had also dealt with complaints which had been referred to it, on a third-party basis, by Members of Parliament.

3.74 I readily accept that this is a difficult issue to resolve satisfactorily. But, on the evidence, I am left with the distinct impression that there has been an undue readiness to decline to consider a third-party complaint (which raises a *prima facie* breach of the code of practice) simply because it is a third-party complaint.

Inquiries

3.75 The Privacy Committee had recommended (recommendation 20), that the Press Complaints Commission should have a specific responsibility and procedure for initiating inquiries whenever it thought it necessary.

3.76 The feeling of the industry, however, was that confidence in the Press Council had been damaged by its assumption of the dual role of prosecutor and judge in its inquiries and that the Press Complaints Commission should concentrate on its adjudication role. Accordingly, the initiation of inquiries was not included in the Commission's remit.

3.77 Lord McGregor told me that he felt strongly that the Commission should not, at least in the early stages of its existence, undertake the kind of inquiries which had been conducted by the Press Council. He felt that such research needed to be conducted thoroughly, that almost certainly it would need to be put out to contract, and that he himself would not wish to put his name to such research unless he was fully confident in the integrity of the results. He did not, however, rule out general inquiries for all time.

Procedure

3.78 The Privacy Committee had contemplated that adjudications would normally be made by committees of the Commission and recommended (recommendation 21) that the committees should have delegated power to release adjudications, subject to the right of appeal for either party to the full Press Complaints Commission before publication. It was further contemplated that particularly difficult or important cases could be referred to the full Commission when the committee considered it desirable.

3.79 The Press Complaints Commission has, however, adopted a different approach. An outline of the procedure which has been adopted is set out in the Commission's first annual report. 'The procedures of the Commission are kept as simple as possible. They meet every month; they do not hold formal hearings at which witnesses give evidence. All complaints and adjudications are dealt with on paper . . . It is a fundamental principle of the Commission's procedure that the members themselves exercise final control over complaints. Regular reports listing every complaint are circulated. They show how each is being pursued by the staff and Commissioners can require any complaint or communication to be brought before the full Commission . . . In the first instance, the primary aim is to ensure that complaints are dealt with swiftly and sympathetically by editors. Every letter which raises a *prima facie* breach of the code is sent immediately to the editor of the publication concerned with the request to attempt a swift resolution of the difficulty if at all possible . . . There is formal adjudication only if persuasion fails. Commissioners receive all the relevant documents together with a draft adjudication from their staff which they will discuss and accept or amend at their monthly meetings.'

3.80 I can readily see that there may be advantages in dealing with all complaints on paper; and it may well be that the oral hearings before the Press Council had contributed to the delays. The Commission told me that although oral hearings were not a normal part of the Commission's procedure, the Commission would consider any request to hear oral evidence in the circumstances of each case. An unwillingness to hear evidence must make the resolution of disputed issues of fact more difficult.

Waiver

3.81 The Privacy Committee had recommended (recommendation 22) that the waiver of legal rights should no longer be operated. Lord McGregor confirmed that a formal waiver of legal action was no longer required. But, he said, the

Commission needed to exercise some caution if complaints to them were also the subject of court proceedings or likely to become so. This, Lord McGregor contended, did not amount to a waiver. There was a need to make sure that the Commission should not be used as a fishing expedition by those who were seeking to obtain evidence which they could subsequently use in court proceedings. On some occasions it was necessary for the Commission to seek an undertaking from complainants that they would not institute legal proceedings until the Commission had completed its investigation. Unless such an undertaking were given, newspapers might be reluctant to co-operate fully in the Commission's enquiry into the complaint. Ms Clare Short MP (paragraph 4.56) was invited to give just such an undertaking.

Finance

3.82 The Privacy Committee had recommended (recommendation 23) that if the industry wished to maintain a system of non-statutory self-regulation, it must demonstrate its commitment, in particular by providing the necessary money for setting up and maintaining the Press Complaints Commission.

3.83 The Home Office was consulted regarding the financial implications of the proposed dissolution of the Press Council and the creation of the Press Complaints Commission. The Home Office made it clear, at the meeting with representatives of the Newspaper Society on 25 July 1990, that the industry must accept responsibility for funding. The Government would be extremely unlikely to contribute to the wind-up costs of the Press Council or the financing of the new body.

3.84 The five trade associations which were constituents of the Press Council met the final costs of that body.

3.85 Pressbof set a revenue target of £1.5 million for 1991 to recover the setting-up costs of the Press Complaints Commission and Pressbof and to provide for the running expenses of both bodies. The likely requirement had been discussed with Lord McGregor. The target was in excess of the combined requirements to allow for possible shortfall in contributions.

3.86 It was agreed that for a period of two years the costs should be shared among the different sectors of the industry in the same proportions as the employer bodies had contributed to the Press Council —

	%
National Newspapers (NPA)	54.2
Regional/Local/Free Newspapers (NS/SNPA/AFN)	36.1
Major Scottish Newspapers (SDNS)	2.8
Magazines (PPA)	6.9

3.87 The NPA and the SDNS agreed to maintain responsibility for collections from their sector but banded scales of contributions were developed for regional/local/free newspapers and for magazines.

3.88 An explanatory statement setting out the mechanics of the operation and carrying an endorsement from the presidents/chairmen of the six associations was circulated to publishers, followed by requests for payment.

3.89 Pressbof informed me that the finance-raising operation had gone smoothly and that the vast majority of publishers had co-operated in meeting their share of the costs. 96% of the target income for 1991 had been achieved.

3.90 Having covered set-up costs and the refurbishment of the Press Complaints Commission premises, Pressbof felt confident in reducing the scale of fees by 15% for 1992. The 1992 collection had been correspondingly satisfactory.

3.91 Although no hot line, as recommended by the Privacy Committee, has been set up, Pressbof informed me that it was satisfied that it had fully provided the finance which the Press Complaints Commission required. Lord McGregor wrote in the foreword to the Commission's first annual report, published in May 1992: "The relation between the Commission and Pressbof is that their budget

has been met without demur on the footing that the Commission remain wholly independent in their necessary expenditures but are required to satisfy the board (of Pressbof) that their income has been spent on the purposes for which the levy was raised”.

Liaison

3.92 One of the aims of setting up Pressbof had been to provide a mechanism for structured liaison between the Press Complaints Commission and the industry. Pressbof considered that this has operated effectively. Budgets had been discussed constructively, advice and assistance on financial and administrative matters had been given by Pressbof to the Commission, and Pressbof had provided a sounding board for the Commission on such matters as its advertising campaign.

3.93 Pressbof told me that, with only minor variations, the industry had done what was asked of it by the Government, when the Privacy Committee’s Report was accepted, and that in accordance with paragraph 15.34 of the Privacy Committee’s Report, the industry had demonstrated its commitment, in particular, by providing the necessary money for setting up and maintaining the Press Complaints Commission.

Summary

3.94 Overall, there are significant differences between the Press Complaints Commission which the Privacy Committee recommended and the Press Complaints Commission which has been set up by the industry. The principal differences are these:

- (i) The members of the Commission are appointed, not by a body which is itself independent of the press, but, in effect, by a body which is the creature of the industry.
- (ii) There are signs that the Commission is once again asserting, as the Press Council did, a positive role for the Commission in defending press freedom.
- (iii) The Commission operates a code of practice produced and monitored, not by the Commission, but by the press industry.
- (iv) The industry’s code of practice reduces in several significant respects the protection which the Privacy Committee proposed for individuals, and it does not hold the balance fairly.
- (v) In particular, the industry’s code of practice widens considerations of ‘public interest’, and thereby significantly reduces an individual’s protection.
- (vi) The Commission is generally unwilling to operate a hot line.
- (vii) The Commission is presently unwilling to initiate inquiries.

4 Review of Press Self-Regulation 1991-92

Introduction

4.1 In this chapter I review those aspects of press self-regulation during 1991 and 1992 which appear to me to throw light on the principal matter which I have to consider, namely an assessment of the effectiveness of the present non-statutory self-regulatory arrangements. I do not, however, believe that it would be helpful to review each case which has come before the Commission (still less to attempt a second adjudication), nor each complaint which has been made to me about the Commission's handling of some of those cases.

4.2 As I have explained in Chapter 3, the Press Complaints Commission, as set up by the industry, differs significantly from the Commission which the Privacy Committee recommended, and operates a significantly different code of practice; and this has to be borne in mind in seeking to assess the effectiveness of the present arrangements.

4.3 This Review is concerned with the whole of the work of the Commission, and not simply those issues which relate to privacy. Nevertheless, the emphasis, both of the Report of the Committee and of this Review is directed towards the protection of privacy.

The work of the Press Complaints Commission

4.4 The Press Complaints Commission has published a number of documents indicating how it has approached its task. Its first annual report, published in May 1992, gave an overview of its work for 1991. Separate monthly reports set out the adjudications which have been made by the Commission, indicating whether or not they were upheld or rejected. They have also listed the complaints received which have either been resolved directly without the need for an adjudication, or which did not raise a *prima facie* breach of the code. The Commission has also published a leaflet entitled *How to Complain*.

4.5 The first annual report recorded that, during 1991, a total number of 1396 complaints were received. 12% of all complaints were disallowed either on the ground of unreasonable delay or that they fell outside the Commission's remit. Rather more than one-third were judged by the Commission to show no *prima facie* breach of the industry's code. Almost 28% were resolved directly between editor and complainant. Almost 11% were not pursued by the complainant. Only 6.5% of the complaints received needed to be adjudicated upon, with less than half being upheld. I have also been provided with statistics for the first half of 1992. Comparisons have sought to be drawn with the work-load of the Press Council; but I am doubtful how far comparisons can validly be drawn. The basis of the operation of the two bodies is different.

4.6 The annual report also provided other statistical information. Half the total number of complaints arose in respect of national newspapers (whether dailies or Sundays), and 38% in respect of regional newspapers. Of the 1118 complaints which showed a *prima facie* breach of the code, 740 related to alleged breaches of clause 1 (accuracy), 127 to clause 14 (discrimination), and 80 to clause 4 (privacy). There were also tables which illustrated the outcome of complaints.

4.7 The Commission has also sought to offer advice to the press on matters of particular sensitivity or handling, and to indicate the way in which it has been endeavouring to interpret the spirit of the code of practice. Lord McGregor has emphasised that the Commission did not wield and would not seek enforceable

sanctions. The Commission's powers were as weak or as strong as the moral commitment accepted openly by the newspaper and periodical industry under the Government's threat of statutory intervention.

4.8 The editorial in the 7th Report gave guidance on the use of cuttings and the practice of telephone interviews. The editorial of the 12th Report reminded the press about the sensitivity of publishing detailed addresses of some people in the news.

4.9 The editorial of the 13th report set out the Commission's approach to third-party complaints. In the year 1991, the Commission received 530 third-party complaints. In about half of them, it was decided that the complaints disclosed no *prima facie* breach of the code, and so they were considered no further. Of the remainder, the bulk were either disallowed because they were third-party, or were resolved directly with the editors, or were disallowed on the ground of unjustified delay, or were not pursued by the complainant. Only 12 were the subject of an adjudication.

4.10 In the first six months of 1992, the Commission received a total of 464 third-party complaints. In about one-third, it was decided that the complaints disclosed no *prima facie* breach of the code. Of the remainder, all were disallowed either because they were third-party, or were resolved directly with the editor or were disallowed on the ground of the delay. None was the subject of any adjudication. 250 of these complaints concerned press coverage of the Royal Family.

4.11 Commenting on the statistics given in the first annual report, the Commission said, 'Assertions about falling or rising standards of reporting and commentary in newspapers are frequently made in respect of both long and short periods of time. Neither the Commission nor anyone else are in a position to judge the truth or falsity of such assertions because the empirical data against which they could be tested do not exist. To substitute fact for subjective opinion would require a vast and formidably expensive content of analysis of many newspapers over several years. All that can be said at the moment is to note the experience of the Commission and of editors generally that they have not been overwhelmed by the weight of complaints'.

4.12 The conclusion of Lord McGregor's foreword to the first annual report was optimistic. "No reasonable person could expect a whole industry radically to alter established outlooks and habits in so short a time but I believe that our Annual Report lays out the evidence that the industry's intention is becoming a new reality. I am sure that the ethical standards embodied in the Code will now be observed, cumulatively, expansively and irreversibly".

4.13 The editorial of the 14th report (October 1992) reviewed the evidence which had been presented to this Review. In particular, it referred to the lack in statistical evidence of serious criticism from readers, and the sparsity of complaints about intrusion into privacy. It acknowledged that there were still charges against the press of confusing the public interest with self-interest or what is simply of interest to the public, but asserting that the instances were few and far between.

4.14 In one of its statements, the Commission wrote: 'For those charged with advising the Government of the day (when the Commission's probationary period comes to be assessed) an obvious factor will be the frequency with which newspapers, against which complaints of a breach of the code have been upheld, subsequently commit the same or similar breaches'. I readily accept that this is one of the factors to be considered, and an important one.

4.15 It accordingly becomes relevant to record that *Daily Sport* (see paragraphs 4.25-4.27) appears to have repeated a 'similar breach' (and indeed to have compounded it by delaying publication in full of adjudications against it); but it is also right that I should record that no other case of this having occurred has come to my notice.

4.16 Further, without attempting to suggest why it may be so, it does appear to me that, when one has regard to the large number of stories carried by the press each year, the number of complaints made to the Commission is indeed small. As Lord McGregor wrote in his foreword to the first annual report, 'The outstanding conclusion from the statistical data presented in this *Annual Report* is the astonishingly small number of complaints made against newspapers in general and the popular national dailies and Sundays in particular'.

4.17 It has to be borne in mind, as I have indicated, that the industry's code of practice differs significantly from the Committee's proposed code, that the Commission acts only where there is a *prima facie* breach of the industry's code, that it accepts few third-party complaints, and that it does not initiate its own inquiries. Nevertheless, the reports and editorial guidance, taken together, would indicate that the Commission, as set up, has been operating as an effective regulator.

4.18 There was, however, evidence which pointed the other way, which I must now consider.

Private individuals

4.19 The Privacy Committee focused principally on the protection of the privacy of private individuals. The Review received evidence from several private individuals who were unhappy with the way in which they had been treated by the press. Their claims included inaccurate reporting, harassment, the taking and publication of unauthorised photographs and the invasion of privacy of hospital patients or grieving relatives.

4.20 These were people who were unwillingly thrown into the limelight. Some were not the principal focus of media interest but were merely their relatives, partners, friends or work-colleagues and, as a result, themselves became subjected to press attention. The results were often devastating, affecting the health, professional credibility and working and personal relationships.

4.21 Many had not complained to the Press Complaints Commission and indeed some seemed unaware of its existence. Many felt that the legal remedies open to them, through, for example, the laws of defamation and breach of confidence, were too lengthy and costly to be of any avail.

4.22 Many of those private individuals who had complained to the Commission, and who submitted evidence to me, were unhappy with the Commission's performance in handling their complaint. Several were unhappy with the length of time which the Commission took to process complaints: most complainants expected a quick retraction or apology, which, they felt, the Commission had been unable to provide.

4.23 In submitting evidence to me, the Commission accepted that in several cases there had been unacceptable delay. This was attributed in some cases to staff incompetence. I was told that the members of staff concerned had since left the Commission.

4.24 I also received evidence relating to the way in which the Commission handled one particular complaint relating to the coverage by the media, in the run-up to the General Election, about the health of a particular child. The Commission told me that, at the time, an extensive review of all procedures inherited from the Press Council was nearly complete, but that, although in the instant case there had been no *prima facie* breach, there had been an unacceptable delegation to the staff of the Commission's inherited powers.

4.25 There was, however, another case (reported by the Commission) concerning a private individual which caused me particular concern. A complaint had been made to the Commission that *Daily Sport* had invaded a woman's privacy by publishing her name in a detailed and salacious report of a sexual assault on her. The report had not been in breach of the Sexual Offences (Amendment) Act 1992 only because the Act had not by then been brought into force. The Commission, however, held that the report was in breach of the code

of practice. The Commission had already upheld a similar complaint earlier in the year, also against *Daily Sport*, condemning the manner in which the then existing legal right to name a victim of an indecent assault had been exploited by *Daily Sport*. In the instant case, the Commission deplored not only *Daily Sport's* decision to publish, taking advantage of the commencement date of the new Act, but also to repeat this violation of the code.

4.26 The report of this complaint and adjudication also recorded *Daily Sport's* failure to print the Commission's earlier adjudication, and recorded that this in itself was a gross breach of the industry's code of practice. The preamble to the code indeed provides that 'Any publication which is criticised by the Press Complaints Commission under one of the clauses (of the code of practice) is duty bound to print the full adjudication which follows in full and with due prominence'.

4.27 The significance of this behaviour by *Daily Sport* cannot have been wasted on the Commission. In its first annual report, published in May 1992, the Commission had said, 'The Commission are satisfied that publications have observed the formal adjudications which the Commission have made in respect of complaints against them'. Lord McGregor told me that the Commission did not regard *Daily Sport* as truly being a newspaper. But *Daily Sport* had been invited to subscribe to, and (as the Commission put it) 'affected to support' the code. I understand that all adjudications against *Daily Sport* may now have been printed in full. But this does not meet the concern that one publication had apparently been prepared to treat the Commission with contempt.

4.28 There was a related instance (which did not involve a private individual) which the Commission drew to my attention. A complaint was made by the Economic League of an article which appeared in the *Daily Mirror*. The Commission upheld the complaint, but only on a narrow point. The Commission's adjudication became the subject of adverse discussion in the *Daily Mirror*. Although the Commission did not object to editorial discussion of their adjudication, the Commission told me that it did believe that, in the instant case, the *Daily Mirror's* reaction demonstrated contempt for the Commission and a refusal to understand the adjudication. The Commission did not, however, take the matter up with the *Daily Mirror* because of the frenzy following Mr Robert Maxwell's death.

Public figures

4.29 The treatment of public figures by the press was not the central focus of the work of the Privacy Committee. During the course of my Review, however, a number of highly-publicised cases arose which centred on personal matters relating to public figures. These cases included coverage of royal marriages and the conduct of Members of Parliament. A large number of the submissions which I received took the view either that such publication was intolerable and that some form of regulatory restraint was required, or that the press coverage of such matters was legitimate and provided information which the public had a right to know, and the press a duty to provide.

4.30 Are all people entitled to expect the same level of protection of their privacy? Should a person in the public eye be expected to accept a lower level of protection than a private individual? On one argument most public figures have chosen to go into public life knowing that one of the consequences is that the media may well take a greater interest in that person than in private individuals. As against that, it is contended that privacy is a fundamental right, and that there remain parts of every person's life which should be wholly inviolate, no matter the extent to which a person may be in the public eye.

4.31 Some argue that the private life of a public figure is irrelevant to the performance of that person's public duties. But, so it is contended, private behaviour may impinge on public performance, or throw light on the way in which that person is likely to carry out his or her public duties. A person who is engaged in a clandestine relationship may thereby undergo additional stress or strain. A person in the public eye may seek to project publicly a false persona.

4.32 Some contend, as Lord Ardwick did in the debate in the House of Lords on 1 July 1992, that the essence of the information should not be protected, but that the associated details should. Thus, it may be acceptable for the press to reveal that a particular public person was having an extra-marital affair, but unacceptable to descend to irrelevant details.

4.33 It has also been pointed out that the truth can be and often is embellished with falsehood. It is sometimes said that the press, while essentially basing their story on truth, may seek to sensationalise it with inaccurate information. It was Pooh Bah in *The Mikado* who defended such embellishment on the basis that it was “Merely corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative”. But such embellishment puts the person in question in a difficult position. He or she can hardly be heard to complain that although the charge of adultery is true, some of the more lurid details are not.

4.34 Much of the debate surrounding these public-figure cases has centred on whether or not the publication of the information was in the ‘public interest’; and it is perhaps worth remembering that the Privacy Committee’s proposed code of practice deliberately avoided a generalised ‘public interest’ consideration. Nevertheless, while it well may be that the essence of the information which is published is in the ‘public interest’, all too often, so it seems to me, this justification for publication has been used by the press to seek to justify publication of any and all associated information, and to regard any and every tactic to obtain such information as justifiable. Once a generalised ‘public interest’ consideration has been raised, it is then said that the matter cannot be adjudicated on because it then becomes one of ‘taste’ or of ‘editorial judgment’.

4.35 Further, it cannot be right when it is the friends and family of people in the public eye who are subjected to the same treatment as those who are themselves in the public eye. The fact that the behaviour of a public figure may give rise to justifiable press interest, does not mean that every member of his or her family should be regarded as fair game for press intrusion, particularly where those people are wholly irrelevant to the issue which is of public interest.

4.36 The use of financial inducements to persuade individuals to disclose information about public figures is another potentially sinister aspect of this matter. Information obtained by financial inducements may, perhaps in exceptional circumstances, be warranted; but I am not persuaded that the press give proper weight to the potential dangers involved.

4.37 In short, the fact that the essence of a particular story may be in the ‘public interest’ is not sufficient reason for the press to assert that any and every tactic, however sinister or deceptive, can legitimately be employed in the pursuit and publication of associated information. Those occasions on which a public figure, by his or her conduct, forfeits the right to any kind of protection whatsoever for his or her privacy must indeed be rare.

4.38 I conclude that while, *prima facie*, everyone is entitled to protection of their privacy, those persons discharging public functions must be prepared to expect the level of that protection to be reduced to the extent, but only to the extent, that it is necessary for the public to be informed about matters directly affecting the discharge of their public functions.

4.39 This would be a stricter test than that which was suggested by the Press Complaints Commission in the statement which it issued on 22 July 1992 (see paragraph 4.67), namely, that ‘In the case of politicians, the public has a right to be informed about private behaviour which affects or may affect the conduct of public business’.

4.40 People who are in the public eye range over a wide area of human activity; and the reduction in the level of protection must vary accordingly. Nevertheless, the experience of the last few months has emphasised that there are at least two categories of persons in the public eye whose position particularly needs to be considered: Royalty and Members of Parliament. Accordingly, I now consider

several of the recent cases involving the private lives of people who have been in the public eye, and some in which it appears to me that regulation has been less than effective.

Royalty

4.41 *Princess Eugenie*. On Sunday 14 July 1991 *The People* published two photographs of Princess Eugenie, the baby daughter of the Duke and Duchess of York, running naked in the high-walled garden of her home. The photographs were taken without the knowledge or consent of her parents. After the Commission had sent the editor a complaint, made on behalf of the Duke, the newspaper published the main picture a second time and also published a leading article defending its action on the basis that they were charming, natural photographs of a little girl published good naturedly and affectionately. The Commission held that they amounted to an invasion of privacy. In its adjudication the Commission said this: “*The People’s* further action demonstrated contempt for the complaints procedure and the Commission. Moreover, it was a breach of faith with other editors who honour the code and support the procedure. In particular, by making capital out of the complaint by reprinting the picture and soliciting readers’ view, *The People* deliberately undermined the complaints procedure ... The Commission emphasises that continuing breaches of the code and contempt like that committed by *The People* in calculated disregard of the industry’s assurances and intention will inevitably lead to statutory intervention in the press.”

4.42 *Diana*. In early June 1992 *The Sunday Times* began its serialisation of Mr Andrew Morton’s book ‘*Diana: her true story*’. This gave details of the Prince and Princess of Wales’ ‘loveless’ marriage, suicide attempts by the Princess of Wales and the Prince of Wales’ alleged relationship with Mrs Camilla Parker-Bowles. In the following days press coverage escalated and fuel was added to the fire by claims that the Princess of Wales’ close friends had contributed to the book. The visit by the Princess of Wales later that week to Mrs Carolyn Bartholomew (who was an acknowledged source), was seen as an expression of the Princess of Wales’ tacit approval of the book.

4.43 The suggestion that the Princess of Wales and her friends had co-operated with Mr Morton in the book’s compilation was denied by a Palace spokesman. At that stage Lord McGregor arranged a meeting with three members of the Commission and a statement was drafted severely criticising press reporting of the state of the marriage. The draft statement was in these terms:

“The most recent intrusive and speculative treatment by sections of the press (and, indeed, by broadcasters) of the marriage of the Prince and Princess of Wales is an odious exhibition of journalists dabbling their fingers in the stuff of other people’s souls in a manner which adds nothing to legitimate public interest in the situation of the heir to the throne.

Such prurient reporting must add to the burdens borne by children whose lives are affected and greatly increase the difficulties for members of the Royal Family in carrying out their obligations to the public.

The state of the marriage has been put into the public domain in part at least by the outward behaviour of the spouses and it is therefore a legitimate subject within the public interest for report and comment by the press. As the industry’s own code of practice affirms, the manner in which information is reported and tone in which it is discussed often matter as much as the substance of the stories themselves. Frequently, the manner and tone of the reporting of the private lives of the Prince and Princess of Wales has beyond doubt been in breach of the code of practice.

The Commission have been distressed by this reversion by some newspapers to the worst excesses of the 1980s and are bound to state publicly their view that the continuance of this type of journalism will threaten the future of self-regulation just at the time when it appears to be succeeding.

The newspaper and periodical industry set up the Press Complaints Commission in accordance with the Calcutt Committee's recommendation that the press should be given 'one last chance to demonstrate that non-statutory self-regulation can be made to work effectively. This is a stiff test for the press. If it fails, we recommend that a statutory system for handling complaints should be introduced.'

The duty of the Commission is to interpret and uphold the letter and spirit of the self-disciplinary ethical code of practice framed by the press and accepted by all proprietors and editors. The Commission recognise that fierce competition among newspapers is a necessary condition of economical health and hence of independence which must rest on profitability. Nevertheless, the code of practice provides the framework of decency within which all competitors must work."

4.44 Lord McGregor told me that, before the statement was issued, he had read it to the Queen's Private Secretary and asked him for an assurance that the rumours linking the Princess of Wales and her friends with involvement in leaking information to the press were baseless. He received that assurance, and on 8 June the statement was issued on behalf of the Commission.

4.45 The immediate response to the Commission's statement was mixed. On the day after the statement was issued, the Leader of the House of Commons said that there would be widespread support in all parts of the House for the comments made by the Commission; and this view was repeated by the Earl of Longford and others in the debate which took place in the House of Lords on 1 July.

4.46 However, on 10 June *The Times* carried articles indicating that some of the tabloid editors did not accept the Commission's statement. The articles referred to *The Sun* as having dismissed the Commission's judgement as nonsense and of having confused the message with the messenger. Ms Chapman, editor of the *News of the World*, and a member of the Commission, was reported as having said, 'I think this story has got to be covered. It is an historic story and one which is in the public interest'. Mr Andrew Neil, editor of *The Sunday Times* was reported as having said, 'It's hard to work out what the Commission is really saying, because the statement does so much damage to the English language that it is almost unintelligible'.

4.47 Lord McGregor told me, however, that, also on 10 June, he was informed by representatives from News International that the Princess of Wales was participating in the provision of information for tabloid editors about the state of her marriage and intended to make herself available to be photographed with a friend who was known to be one of the sources for Mr Morton's book. Lord McGregor took further soundings and satisfied himself that the information was correct. Lord McGregor told me that the Queen's Private Secretary subsequently spoke to him in order to apologise and to say that his assurance had been given in good faith, and that the assurance was accepted without reservation.

4.48 Lord McGregor told me that this situation seriously embarrassed the Commission and undermined the purpose of a carefully timed and emotively phrased statement of the Commission's attitude towards the reporting of royal matters.

4.49 Against that background and the likelihood that information would continue to be leaked to the press, Lord McGregor told me that he had concluded that the Commission had no alternative but to hold their hand for the time being. He nevertheless urged the Palace to make available to the Commission in the form of complaints any circumstances in which they felt that the press had made factual inaccuracies about the royal family. No formal complaints were, however, ever received. Lord McGregor told me that his confidence in any future information coming from the Palace was undermined.

4.50 But what was the public perception of all this? The *Sunday Times* had published the first serialisation of Mr Andrew Morton's book. The Commission had then issued a stern statement marking its disapproval. The *Sunday Times*, nevertheless, continued to serialise the book, but with no further word from the Commission. This was not a situation which was likely to inspire public confidence in the work of the Commission.

4.51 In the debate in the House of Lords on 1 July 1992 Lord Ardwick said that he regarded the Royal story concerning *Diana* as an extraordinary event: something that might happen only once in a generation and perhaps not even once. Unfortunately, as things turned out, that was not to be so; but the significance, for my purposes, is to consider the part played—or not played—by the Commission thereafter in demonstrating that it was an effective regulator. I refer briefly to three subsequent cases, each involving the Royal Family.

4.52 *Duchess of York*. Widespread coverage of the Royal family continued with *The Daily Mirror's* publication in August of photographs of the Duchess of York at a villa in the South of France. The pictures showed a topless Duchess sunbathing by the pool with Mr John Bryan who had claimed to be her financial adviser. The photographs were taken by a freelance photographer using a telephoto lens. Mr Bryan applied for an immediate injunction in Paris, but failed, reportedly on the ground that the judge had no proof that the pictures existed. Mr Bryan had tried to obtain an injunction to prevent publication in the High Court in London, but failed, on the ground that English law does not (as is well-known) protect personal privacy. Subsequently, Mr Bryan and the Duchess were nevertheless awarded damages by a French court. Although there were third-party complaints to the Commission, no complaint was made by anyone directly involved. Lord McGregor was reported in the press as having said that Mr Bryan's solicitor had telephoned him to ask if he could prevent publication of the pictures, but that he had explained that it would be extremely difficult to make a judgment about material which the Commission had not seen. He is reported as having added that the Commission could not act until it received a formal complaint after the code of conduct had been allegedly broken.

4.53 *Dianagate*. A few days later newspapers printed details of an intimate bugged telephone conversation alleged to have taken place between the Princess of Wales and a male admirer. The conversation was said to have taken place on New Year's Eve 1989 and to have been recorded by a retired bank manager. This incident raised questions about the state of the law covering the interception of telephone conversations. Although there were third-party complaints, there was no complaint by anyone directly involved; and the Commission did not become publicly involved.

4.54 *Prince and Princess of Wales*. Press speculation on the Royal marriage heightened when the Prince and Princess of Wales visited Korea at the beginning of November for a four-day visit. An up-dated version of Mr Andrew Morton's book claimed that there had been a bitter row between Princess Diana and Prince Philip and gave further evidence of a strained relationship between the Prince and Princess. Photographs showing the couple looking miserable were printed in an attempt to support the story that the marriage was in difficulties. The marriage may have been in difficulties, but the papers did not make it plain that the 'miserable' pictures had, in fact, been taken during a remembrance service. The Commission, however, did not itself become publicly involved.

4.55 The lack of any public action on the part of the Commission in these cases, at the time or later, may, in the circumstances concerning the serialisation of *Diana*, have been understandable. But the public could not have been expected to see it that way. To many, the Press Complaints Commission appeared ineffectual.

Politicians

4.56 *Clare Short*. In May 1991 complaints by Ms Clare Short MP alleging breaches of the code of practice in respect of accuracy and privacy were upheld

by the Commission. The Commission held, *inter alia*, that the 'public interest', in the industry's code, was not whatever happened to interest the public. This was an important distinction to be drawn; but it was a distinction which would never have needed to have been drawn, had the Commission been operating, not the industry's code, but the Privacy Committee's proposed code of practice (see paragraphs 3.50-3.52).

4.57 *Paddy Ashdown*. In February 1992 Mr Paddy Ashdown MP, the Liberal Democrat party leader, obtained an injunction restraining English newspapers from printing a story that he had had an affair with his secretary five years previously. The story had been obtained from a document held by Mr Ashdown's solicitors, but which had been stolen from them. But the story broke when *The Scotsman*, which was not covered by the English injunction, chose to print the story. Mr Ashdown then decided that it was better for him to admit the affair.

4.58 When the story first broke, the Commission did not publicly involve itself expressly in the affair, notwithstanding the 5-year lapse of time, the fact that use was being made of the stolen document and the fact that advantage had been taken of the territorial limits of the English injunction.

4.59 On 6 February 1992 Lord McGregor, as chairman of the Commission, did, however, issue a warning that a return to earlier standards of press performance would certainly result in a privacy law and statutory body with legal powers to enforce sanctions against the press. The statement was in these terms:

"During the 1980s in Britain a small number of publishers and editors neglected the basic ethics of journalism and reinforced a belief among back-bench MPs that the public interest required the enactment of a law of privacy, a right of reply and a statutory press council with enforceable legal sanctions.

In 1989, the Government appointed a Departmental Committee on Privacy and Related Matters under Sir David Calcutt. Their report recommended the setting up of a Press Complaints Commission in place of the Press Council in order to give 'one last chance to demonstrate that non-statutory self-regulation can be made to work effectively. This is a stiff test for the Press. If it fails, we recommend that a statutory system for handling complaints should be introduced'.

The Government and the Labour Party accepted that recommendation and agreed that both the Press and the Commission would be on probation for 18 months. This period ends in July of this year.

When the Press agreed to the Calcutt proposal for a new commission, they framed their own self-disciplinary, ethical code of practice along the lines of that recommended by the Calcutt Committee and gave the Commission the duty of upholding its letter and spirit.

The whole Press knows that a return to the pre-Calcutt performance will certainly result in a law of privacy and a statutory body with legal powers to enforce sanctions against the Press, though some parts do not always act upon their knowledge. A large body of opinion within and without Parliament accepts that such a development would be a danger to our political democracy and a severe threat to liberty of expression.

In the light of these considerations, I hope that the Press as a whole will recognise the dangerous consequences in the pre-election period of mixing political reporting with irrelevant commentaries upon the private lives of political figures. When proprietors and editors committed themselves to the new Code of Practice and set up the Commission to uphold it, they accepted also that they were moving into a new era in which the standards of journalism would be higher and different from those practised in the past.

The maintenance of newspapers securely independent of Government will depend in the heated atmosphere of the next few weeks upon the willingness of all to conform to the new obligations which they accepted in

1990 under the threat of Government intervention. I recognise the great difficulties of editorial judgement in such matters. Nevertheless, restraint must be the maxim for the day”.

4.60 Subsequently, however, Lord McGregor referred to the *Ashdown* affair in the letter he wrote to Sir Frank Rogers, chairman of the Newspaper Publishers Association, on 28 February 1992 in these terms:

“The maintenance of newspapers securely independent of Government will depend in the heated atmosphere of the run up to the election upon the willingness of the Press to conform to the obligations which they accepted under threat of Government intervention after the publication of the Calcutt Committee’s report.

Senior politicians, including the Prime Minister, Paddy Ashdown and Roy Hattersley, have gone on record in the last three weeks as opponents of a law of privacy and a statutory body to regulate the Press provided that the PCC remains effective. Nevertheless, they all made the qualification that the salacious larding of political reporting with irrelevant commentaries on the private lives of public figures could destroy their confidence in the hitherto successful upholding of the new Code of Practice to which the whole industry has committed itself.

The Commission will have no truck with prior restraint and have rejected, though not yet publicly, the Calcutt Committee’s recommendation that they should operate a “hot line”. They believe that editors must be free to provide during this period all the information relevant to enable the electorate to make informed choices. I regard any attempt to influence editorial judgment in this respect as an unacceptable infringement of the freedom of the Press.

However, I do not think it improper to stress that the Commission’s assessment of the Paddy Ashdown affair suggests very strongly that what bothers politicians and many readers is the manner in which information is reported and the tone in which it is discussed rather than the contents of the stories themselves. I shall therefore be very grateful if you will be so kind as to consider the possibility of drawing to the attention of your members my anxiety about the peculiar vulnerability of the industry’s new system of self discipline during the next six weeks. I hope that restraint will be the maxim of the day”.

4.61 This was not, unfortunately, the end of the matter for Mr Ashdown. Several weeks later *The Sun* ran a story that, at the time of the General Election, a cabinet minister (whom the editor declined to name) had telephoned him to assert that Mr Ashdown had had affairs other than the one he had admitted; but that the assertion had been checked and had been found to be untrue. But the effect, of course, was that Mr Ashdown’s private life, once again, featured prominently in the press. The Press Complaints Commission, however, did not become publicly involved.

4.62 *Virginia Bottomley*. At the beginning of July 1992, *The Independent* published an item in its diary column revealing the fact that the Secretary of State for Health, Mrs Virginia Bottomley MP, had given birth to her son three months before her marriage, whilst she was still a teenager. *The Independent* sought to justify publication of the story on the ground that the Health Secretary had earlier in the week announced a campaign against unwanted teenage pregnancies, as part of the Government’s White Paper on the nation’s health.

4.63 Mr Peter Bottomley MP, her husband, complained to the Commission that the story contained excessive details about his son and was a unwarranted intrusion into his family’s private life. *The Independent* published an expression of its regret that it had named the Bottomley’s son. Mr Bottomley then withdrew his complaint.

4.64 However, *The Sun*, attacked Mr Andreas Whittam-Smith, *The Independent*’s editor, calling him a ‘disgrace’, saying that his paper was ‘edited by twerps with morons in mind’ and threatening to investigate and expose private matters relating to Mr Whittam-Smith. But the effect, of course, was to give increased

circulation to the very story which *The Sun* asserted should never have been printed. But *The Sun's* action did not apparently stir the Commission into public action.

4.65 *David Mellor*. Later that month *The People* published details of a liaison between actress Ms Antonia de Sancha and Mr David Mellor MP. The affair came to light after a telephone conversation between the two had been recorded.

4.66 Lord McGregor called an emergency meeting of the Commission. Public understanding (wrongly or rightly) was that the meeting had been called to decide whether publication was in the 'public interest'. Ms Patsy Chapman, the editor of *News of the World*, is a member of the Commission. On her way to the meeting, and so before she had heard any discussion at the meeting, Ms Chapman publicly threatened to resign from the Commission if the Commission found that the publication of the report was not in the public interest.

4.67 The Commission, however, subsequently issued a statement saying it had not adjudicated upon the media coverage of Mr Mellor's private life, as it had received no complaint from the parties involved. The statement was in these terms:

"The Commission met this morning to discuss the issue of privacy. They did not adjudicate upon media coverage of Mr David Mellor's private life as they have received no complaints from the parties involved.

Although complaints to the Commission of breaches of the industry's Code of Practice on the ground of privacy have been relatively few (some 7.2% of the total), such complaints generate a public interest out of proportion to their numbers. The Commission attach as much importance to complaints on this ground made by the public in general as they do to those which affect public figures.

Since the Commission were set up there has been widely discussed instances involving such public figures as Ms Clare Short, MP, Mr Paddy Ashdown, MP, the Prince and Princess of Wales, Mrs Virginia Bottomley, MP, and Mr David Mellor, MP.

The Commission were set up by the press as an independent body to uphold a code of practice framed by editors. In a democracy, judgments on invasion of privacy must involve the protection of the individual's privacy for domestic and other intimacies.

[The statement then set out clause 4 (relating to privacy) of the industry's code of practice (see Appendix C), and continued:]

In the case of politicians, the public has a right to be informed about private behaviour which affects or may affect the conduct of public business. The holders of public office must always be subject to public scrutiny. Thus, judgements about invasions of privacy must balance two sets of rights which may often conflict.

The Commission believe that they are in a better position than a court of law to make such delicate judgments which in essence require both flexibility and a balancing of imponderables in the different contexts of each instance.

The Commission now wish to review their experience over the last 18 months of upholding the industry's own code of practice. In the light of that review, they will consider whether they should recommend amendments or additions to the code. They will also take into account the several proposals for a law of privacy and the experience of other countries. This review will be included with other evidence which the Commission will submit to Sir David Calcutt QC.

The Commission reaffirm their conviction that self-regulation provides the best method of ensuring that the British press is conducted in accordance with ethical principles. They believe that direct intervention by the Government in the press would destroy the essential basis of freedom of expression and democratic political procedures."

4.68 However, at about the same time, Ms Chapman, when she emerged from the meeting of the Commission, told the press that the Commission had concluded that the story was in the public interest. This led to an article in that day's edition of the *London Evening Standard*, causing the Commission to issue a further statement that day clarifying and confirming its earlier one.

4.69 The confusion surrounding the purpose of this particular meeting, coupled with the timing and content of the various statements which were made, did nothing to increase public confidence in the work of the Commission.

Reactions of public figures

4.70 Why have so many highly-publicised public-figure cases not attracted complaints to the Press Complaints Commission from those directly affected? In only three of these cases which I have reviewed (Princess Eugenie, Ms Short and Mrs Bottomley) have complaints been made by or on behalf of those directly involved. Is it that royalty, government ministers and other public figures are unwilling to make complaints because of their position? Or are they concerned, as others may well be, that a complaint would simply attract further publicity? Indeed, it might perhaps be argued that by complaining they would legitimise the 'public interest' in the original publication of allegedly private information: even if the original publication of the information had been improper, the complaint legitimised the further publication. Or is it that, at least in part, there is a lack of confidence in the Commission and the industry's code of conduct which it seeks to uphold? Should not the Commission, acting either on a third-party complaint, alternatively of its own volition, have investigated some of these matters and, at the very least, have given guidance to the industry for the future? This, after all, was what it had at first apparently sought to do in the cases of *Paddy Ashdown*, *Diana*, and possibly *David Mellor*.

Overview

4.71 News International contended that most editors had no trouble spotting stories which involved unjustifiable intrusion and, for the most part, did not publish them. It was submitted that, since early 1990, editors had no longer been tempted to make exceptions for particular sensational or revelatory stories unless there was a sustainable public interest argument. It was said that the reasons for this were a wish to avoid public condemnation, a fear of triggering privacy legislation, and an awareness of proprietorial concern.

4.72 Nevertheless, several of those who submitted evidence to me complained that they were dissatisfied with the Commission's procedures. Others contended that, despite the way in which the Commission was undertaking its task, the mechanism of members' appointment was such that it could not be said fairly to hold the balance between the newspapers and the individual: it was perceived as a press body heavily slanted in favour of the press. Others contended that although adjudication on the complaints had been conducted in a proper manner, it was not seen as a body which had the confidence of the public.

5 Assessment of Self-Regulation

Self-regulation

5.1 This chapter seeks to assess whether the present arrangements for non-statutory self-regulation have been effective, or whether they now need to be modified or put on a statutory basis. Self-regulation is not to be equated simply with the work of the Press Complaints Commission alone. Proprietors, editors, readers' representatives and ombudsmen have all had their parts to play and, indeed, the suggestion has been made that there should now be one press ombudsman. But the Commission stands at the centre of the present self-regulatory system.

5.2 Is the Press Complaints Commission the effective body which it was intended it to be? I should make it clear that in this chapter I am not concerned with whether the Press Complaints Commission was set up in the way in which the Privacy Committee recommended. That is not now the point. What is now important is whether the Press Complaints Commission is an effective body in regulating the press. There can be no doubt that a Press Complaints Commission has been established, and that it has been operating for two years. It is indeed a smaller body than the Press Council, as the Privacy Committee recommended. There is a code of practice. The Commission has received complaints from aggrieved parties and has established a prompt method for attempting conciliation, or if that fails, investigating complaints and reaching decisions. It appears not to have had its decisions ridiculed by the press, who have generally supported the Commission and, where appropriate, published its adjudications.

Debate in the House of Lords

5.3 On 1 July 1992 Lord Bonham Carter initiated a debate in the House of Lords on the first annual report of the Press Complaints Commission. The Commission had reported in May 1992. Thereafter the *Sunday Times* had begun to serialise the book *Diana*. The Government had said that it would review the performance of the new Press Complaints Commission after it had been in operation for 18 months; and since the Commission had begun work on 1 January 1991, the debate took place on the first day from which the review had been promised. Before seeking to make any assessment, I should first take account of the speeches which were made in the debate. As Lord Bonham Carter said, in initiating the debate, 'It is therefore appropriate that today we should be able to debate what we believe should be done in this area before the Government reach their conclusion and while they are making up their minds. It is even possible that our discussion may influence them.'

5.4 Lord Bonham Carter said that, for the press, there must be limits on intrusions of privacy, on manifest political bias, on the concentration of ownership, and above all, on cross-media ownership. He said that although he understood there were pressures for a privacy Bill, on balance he believed that the dangers to which it would give rise outweighed the benefits which it might deliver.

5.5 Lord Stevens of Ludgate, chairman of United Newspapers (which owns Express newspapers), said that, about three years earlier, he had said that legislation was not the answer. He now believed that the setting-up of the Press Complaints Commission had forced the press into a useful process of self-examination and improvement. He said that laws to gag newspapers—albeit passed out of some well-meaning wish to protect privacy—would cripple newspapers' ability to unmask wrong doing. Privacy laws drafted to prevent intrusive and speculative reporting, might well protect the privacy of some blameless

individuals, but they would undoubtedly succour wrongdoers as well. Speaking of the Royal problem, he said that the main criticism he had, and would accept, of recent events was that of tone rather than content. The press, for themselves, would seek to improve that.

5.6 Lord Ardwick pointed out that problems concerning privacy were not the only ones with which the Press Complaints Commission was concerned, and that it was also concerned with accuracy, fair opportunity to reply, the use of subterfuge, harassment, payment for information, intrusion into grief or shock, interviewing children, victims of crime, race and religious prejudice and financial journalism. He said that anybody reading the Commission's reports must be impressed by their clarity and concision, and the general reasonableness of their judgment. The Commission had not been afraid to turn down an MP or a great bank. Referring to the Royal problem he said that the matter was one of considerable public interest and concern. Had he been presenting it, he hoped that he would have presented it more gravely. It was not justifiable to report in detail every spat and every act of apparent coldness or rejection. However, he had no faith in any privacy Bill. If it were effective, it could only damage the serious newspapers making impossible the serious enquiries which had to be made in the public interest. He did not know of any acceptable sanction that the law could provide which would deter multi-millionaire companies from publishing the scandals that they knew the public eagerly wanted to read.

5.7 Lord Wyatt of Weeford said that since the Press Complaints Commission was set up, it had made a pretty good job of enforcing most of the 16 clauses of its code of practice. Where it had failed, and continued to fail, was with enforcing the clause which dealt with intrusions into privacy. Nor did the balance of the Commission's membership give him much encouragement. He said that when the Press Complaints Commission issued a statement condemning intrusions into the private lives of the Prince and Princess of Wales, editors laughed. They carried on as before. They knew that their rivals would do the same. They knew too that a Press Complaints Commission dominated by the media was, and must always be, a toothless dog in matters of privacy. He said that he was certain that it would never be possible to ensure the right to privacy without a law to back it. He drew attention to the position in France where it was a criminal offence to breach anyone's privacy in intimate, personal, family or sexual matters. He said that there was much feeling among the public that it was the Government's duty to bring in a Bill enshrining the right to personal privacy for everyone without affecting the essential freedoms of the press. They were kidding themselves if they believed that the poor little Press Complaints Commission would ever be able to satisfy the need for personal privacy.

5.8 Lord Thomson of Monifieth said that he supported the proposed law to deal with physical intrusion. The wider debate went to the heart of one of the dilemmas of democracy. There could be no free society without a free press, yet all experience showed that it was impossible to have a free press without there being some abuses of that freedom from time to time. In extreme cases, these abuses could distort and undermine the very democracy that the free press was there to serve. He said that if self-regulation were to be more than a cosmetic exercise, three things were essential: there must be an automatic source of funding, there must be a means of applying effectively an agreed code of practice, and there must be a will to make self-regulation work on the part of the professional members of the Commission. If ever, he said, there was an area of democratic life that cried out for effective self-regulation, it was the media—not in the interest of the press, or even in the interests of the victims or targets of the press, legitimate or not legitimate. The real public interest, as properly defined for this country, was the interest in the principle of free speech and a free society. It would be a sad day if Britain felt compelled to resort to some form of governmental regulation of the press, and particularly so at this time.

5.9 Lord Deedes said that privacy was the one area in which the Press Complaints Commission had a difficulty and had perhaps shown a weakness. He accepted that appropriate legislation could be drafted, but he doubted whether such legislation would be easy to enforce. How, he asked, did one devise and

enforce a law which protected the privacy of the individual without, at the same time, affording some refuge for rogues? His view was that the Government would do themselves some good if they stopped pretending that they could, by legislation, control the ethics of the press. His advice to the Government was that the Government should keep out of it. The public should be told that, to a large degree, it was up to them, in its purchase of newspapers, to choose.

5.10 Lord Jenkins of Putney said that he had reluctantly come to the conclusion that, in this area, self-regulation cannot work, and that it was not working and that it would not work. The question of regulation must be approached very carefully. If the body, created by Government, which was responsible for regulation, was careful, they could enter the field of regulation without censorship. It was extremely difficult to achieve; but, because it was difficult, did not mean that it ought not to be attempted. He said that from the code of practice one must reach the conclusion that the Press Complaints Commission had been ineffectual in implementing in any way the code of practice of which it was supposed to be in charge. The first annual report read more as though it was setting out aims for the future rather than what has been implemented by the Press Complaints Commission day by day. He said that if every point laid down in the code, as an aim to be achieved, rather than something which had been achieved, then the Commission's report told them that something needed to be done to bring the code of practice into actuality rather than to leave it as an ambition.

5.11 Lord Hemingford said that he had been hostile to the findings of the Calcutt Committee which had subscribed to the idea that the press should be put on probation and given one last chance to avoid regulation. He said that certain sections of the press succumbed too readily to the Calcutt formula. There should have been more debate on it before it was implemented. The code which the Press Complaints Commission now administered was written in secret by a small committee of editors and was only published a mere three weeks before the Commission came into existence. He conceded that, after the passage of time, the passive acceptance which the code had received from editors entitled it to a legitimacy which he did not think it deserved at birth. He believed that there was evidence that the relatively few editors about whom there had been intense concern had modified their behaviour.

5.12 Lord Belhaven and Stenton said that the first annual report of the Press Complaints Commission seemed to him to bear little relationship to what he believed was the public perception of what the press was up to now. He asked the question: ought it to be possible for a foreign national to own a large proportion of the British press and media?

5.13 The Earl of Longford said that he could not imagine himself voting against the privacy law, but he did not believe that it would do much good because of the ambiguities involved. He said that, without going as far as statutory controls, which involved many difficulties, one could envisage a Press Complaints Commission which was an advisory body, but on which there was not a majority of representatives of the press.

5.14 Lord Colnbrook (who is a member of the Press Complaints Commission) said that the Commission had been initiated, appointed and financed by the press. He believed that the balance was about right: there was seven editors and eight people who were not editors, but who were connected with the press. He said that the code of practice had been drawn up by the press and not by the Commission. It had been done by a group of editors of newspapers and had been publicly subscribed to by the editor of every newspaper in the country who had agreed to abide by it: that was its strength.

5.15 Lord Elton was not prepared to make the assumption that it was not proper or possible to legislate for the protection of privacy because freedom of speech was generally good, and that it was generally good that it should not be curtailed; nor that justice should be achieved, not by legislation, but by the effect of market forces. There seemed to him to be no argument why one should not legislate for the protection of private individuals whose lives might be destroyed by the intrusion of the media. If there could be regulation in France, such provision should be considered here.

5.16 Lord Harris of Greenwich said that he found the prospect of a statutory Press Commission with members appointed by Ministers a deeply objectionable idea. Nor was he attracted to a Bill dealing with the general right of privacy. But he found it extremely difficult to believe that they should passively accept still further power being transferred to Mr Murdoch's media empire. Its tentacles already extended far too wide. It was time that that power was diminished.

5.17 Baroness Birk said that the press was trying the patience of its good friends. She accepted that the Commission had had some success during its first year of operation, but that that had been tempered by the excesses which had occurred since publication of its first annual report. She said that the tabloids alone must not take the blame for what were considered to be the faults of today's press. The up-market papers fed from the tabloids, as sucker fish fed from the whale, and then published readers' letters, deploring what was happening at the other end of the market. Her view was that although it was a seductive idea to have legislation restricted to dealing only with privacy, which would deal with one of the worst features of the press today, it was an almost impossible task. She did not believe that legislation was the answer, because there was the grave possibility that it would not achieve its aim. She did not believe that it would work. It would also have an adverse effect on the freedom of the press. She believed that they badly needed a Freedom of Information Act. She said that it would be wrong and dangerous if the Government allowed itself to be pushed into legislative sanctions: she believed that financial sanctions should be considered for the Commission if they were not too difficult to work out.

5.18 Viscount Astor, speaking for the Government, said that the debate had highlighted three points: the enormous importance of the subject as regards our basic rights and freedoms; the great difficulty of reaching a satisfactory accommodation in a free society between the rights of the press and those of the individual to be left in peace; and the very wide range of opinion which was held by their Lordships on what the Government might now do in that sensitive area. He said that they should perhaps treat with caution, if not suspicion, editor's claims that they were merely the messengers, especially when the publication of a message of doubtful service to the public interest gave a great boost to circulation. They should always distinguish between the public right to know and what the public delights to know. He said that he would like to underline the great difficulty there would be when it came to considering remedial action, in making decisions about how far was too far.

5.19 Since the debate in the House of Lords took place, there have been a number of cases, concerning public figures, which have been widely reported in the press; and I have already referred to some of these cases in Chapter 4 of this Review (paragraphs 4.52-4.54, and 4.65-4.68).

Last chance saloon

5.20 The Privacy Committee's Report took the view that the press should be given one last chance to demonstrate that non-statutory self-regulation could be made to work effectively. But the Committee recommended that if such self-regulation were to fail, then a statutory system should be introduced.

Triggers

5.21 The Privacy Committee recommended (recommendation 28) that there should be two separate triggers:

- (i) failure by the press to implement all the recommendations of the Committee on setting-up and supporting a Press Complaints Commission within 12 months of publication of the Report (paragraph 16.10); or

- (ii) a serious breakdown of the whole system of self-regulation which rendered the Commission ineffective (paragraph 16.11). Such a breakdown might be indicated by:
 - (a) a less than overwhelming rate of compliance with the Commission's adjudications; or
 - (b) a large-scale and deliberate flouting of the code of practice by the press or a total collapse in standards.

5.22 The Privacy Committee also indicated that the persistent refusal by a few or even one maverick publication to comply with an otherwise adequate system could lead to the abandonment of non-statutory self-regulation.

5.23 There were five matters which caused me particular concern:

- (i) *The Daily Sport's* contemptuous treatment of the Commission (paragraphs 4.25-4.27).
- (ii) *The People's* contemptuous treatment of the Commission (paragraph 4.41).
- (iii) The Commission's handling of the serialisation of Mr Andrew Morton's book *Diana* (paragraphs 4.42-4.51).
- (iv) The Commission's handling of the story about Mr Mellor (paragraphs 4.65-4.69).
- (v) The Commission's apparent lack of public action in other cases involving public figures where some action might reasonably have been expected (paragraphs 4.52-4.54, 4.57-4.64).

5.24 Nevertheless, it cannot, in my view, be said that there has been a serious breakdown of the system which has been put in place, nor that any one publication acted in a maverick way. But, in making my overall assessment, those matters which I have referred to in Chapter 4 and, in particular, in paragraph 5.23 above, have to be taken into account; and although the protection of the privacy of public figures may not be the primary concern, the way in which the Commission has handled cases involving public figures, involving public perception of the efficacy of the Commission, does also have to be taken into account.

5.25 But so far as the first trigger is concerned, I have reached the clear conclusion that there has been a failure by the press to implement the substance of those recommendations of the Privacy Committee which relate to the setting-up of a Press Complaints Commission. As I set out in Chapter 4, what has been set up differs significantly from what the Privacy Committee recommended. But, in the final analysis, it is not the triggers that matter.

Assessment

5.26 On an overall assessment, the Press Complaints Commission is not, in my view, an effective regulator of the press. The Commission has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but also public confidence. It does not, in my view, hold the balance fairly between the press and the individual. The Commission is not the truly independent body which it should be. The Commission, as constituted, is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, operating a code of practice devised by the industry and which is over-favourable to the industry.

Modification

5.27 My terms of reference require me to consider whether the present arrangements should now be modified (as an alternative to statutory regulation). Could the regulatory arrangements yet be modified so as to provide a Commission which would command public confidence and which would fairly hold the balance? Or has the last opportunity for self-regulation now passed?

5.28 It has been argued that two years is too short a time in which to judge the Press Complaints Commission; and there is force in that. But the way forward was clearly spelt out in the Privacy Committee's Report. In particular, the Committee stressed the need for the Commission to be seen as an independent body which would command the confidence of the public. Both the Committee, and subsequently the Government, gave a clear indication that this was the last chance for the press to put its own house in order. It has to be assumed that the industry, in setting up the present Press Complaints Commission, has gone as far as it was prepared to go. But it has not gone far enough.

5.29 In my view the press has demonstrated that it is itself unwilling to put in place a regulatory system which commands the confidence, not only of the press (which I am sure it does) but also of the public, and which fairly holds the balance between them; and I see no realistic possibility of that being changed by voluntary action.

5.30 Too many fundamental changes to the present arrangements would be needed:

- (i) An independent person of high standing would need to be invited, by agreement between the Government and the industry, to appoint an Appointments Commission.
- (ii) That person would need to appoint an independent Appointments Commission.
- (iii) The independent Appointments Commission would need to appoint the Press Complaints Commission.
- (iv) The remit of the Press Complaints Commission would need to make it plain that the Commission has no function positively to promote press freedom.
- (v) The code of practice would need to be drawn up by the Commission itself.
- (vi) The existing code of practice would need to be amended, to reflect more closely what was proposed in the Privacy Committee's report.
- (vii) In particular, justifiable 'public interest' considerations would need to be specifically spelt out in the code (and so as to include the consideration referred to in paragraph 4.38).
- (viii) The Commission would need to operate an effective hot line.
- (ix) The Commission would need to be prepared to receive third-party complaints more widely.
- (x) The Commission would need to be more ready to hold oral hearings.
- (xi) The Commission would need to be prepared to initiate its own inquiries where there was a *prima facie* breach of the code but where no complaint had been made.
- (xii) Pressbof's role would need to be limited to the provision of adequate finance for the Commission.

5.31 Nothing that I have learnt about the press has led me to conclude that the press would now be willing to make, or that it would in fact make, the changes which would be needed. Indeed, the way in which the Commission has been set up, in many ways contrary to the way which the Privacy Committee recommended a Press Complaints Commission should be set up, leads me to the conclusion that it would not be willing to make and would not make those changes.

5.32 As I see it, it is all of a piece. The first Royal Commission on the Press (1947-49) recommended the establishment of the General Council of the Press; but it was only when, in 1952, a Private Member's Bill was introduced to set up a statutory press council that the industry, in 1953, agreed to establish a General Council of the Press on a voluntary basis.

5.33 The second Royal Commission on the Press, which reported in 1962, criticised the General Council's failure to implement the recommendations of the first Royal Commission, in particular on the appointment of lay members. In

the face of the further prospect of a statutory body, the General Council responded with a new commission which included lay membership and a lay chairman.

5.34 The Younger Committee on Privacy which reported in 1972, recommended that if the Press Council were to command public confidence in its ability to take account of the reactions of the public, it must have an equal number of lay and press members. The Press Council, however, failed fully to respond to this recommendation. There were several other recommendations of the Younger Committee which the Press Council failed to implement or to implement fully.

5.35 The third Royal Commission on the Press, which reported in 1977, made a detailed study of the Press Council. It concluded that the Press Council 'has so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers'. It identified a number of contributory factors. The Commission found evidence of 'flagrant breaches of acceptable standards' and 'inexcusable intrusions into privacy' and that there was a 'pressing call to enhance the standing of the Press Council in the eyes of the public and potential complainants'; and it made a number of recommendations (which were set out in paragraph 14.12 of the Report of the Privacy Committee). The Royal Commission made it clear, as its predecessors had done, that, unless the press showed a willingness to accept and conform to the rulings of the Press Council, the only alternative was the introduction of a legal right of privacy and, perhaps, a statutory Press Council. The response to these recommendations, was, yet again, only partial. In particular, a recommendation of a written code of conduct for journalists was specifically rejected.

5.36 The Privacy Committee concluded (paragraph 13.18) in these terms: 'The history of successive Royal Commissions on the Press indicates a continuing reluctance by the press to reform itself except when under threat of more drastic measures being imposed'. The reaction of the industry to the recommendations of the Privacy Committee has been wholly in line with its reaction to the recommendations of earlier Royal Commissions and committees; but on this occasion the Government gave a clear indication that this was the last chance for the press to put its house in order. It is for this reason that I have reached the conclusion that the industry would not make the changes which would now be needed.

5.37 My terms of reference also require me, impliedly if not expressly, to consider whether, even if the present arrangements for self-regulation are not effective, and even if they cannot now be modified, there is not yet some alternative to statutory regulation. For the reasons which I set out in Chapter 7 of this Review, I remain of the view, that, quite independently of the regulation of the press generally, the most blatant forms of physical intrusion—practices involving doorstepping, bugging and the use of long-range cameras—should be outlawed. There remains, however, the possible introduction of a new statutory tort of infringement of privacy; but for the reasons which I also set out in Chapter 7, I am of the view that a new statutory tort of infringement of privacy should not, as an alternative to statutory regulation, be presently introduced.

5.38 Accordingly I recommend (recommendation 1) that the Government should now introduce a statutory regime, as set out in paragraphs 16.14-16.24 of the Privacy Committee's report, and as supplemented by this Review.

5.39 The real possibility of a statutory press regulatory body has been acknowledged by successive Royal Commissions, committees and, most recently, by the Government. The Press Complaints Commission has itself acknowledged it in several of its public statements, (see, for example, paragraphs 4.41, 4.43 and 4.59). The introduction of a statutory press tribunal should not lead to a loss of press freedom. Provided that freedom is exercised responsibly, there will be no loss.

5.40 It may perhaps be contended that a statutory press tribunal would bring a degree of regulation to the regional and local press which was warranted only by the national press. However, while it is true that some of the cases which have caused concern have largely featured in the national press, there are examples, though admittedly fewer, of occasions where regional and local papers have breached the code. In my view a statutory press complaints tribunal must cover all parts of the press. A two-tier arrangement would not be appropriate. But there is no reason why a tribunal should be a threat to the regional and local press.

5.41 Nor do I see any reason why such a tribunal should lead to a Government-controlled media. The tribunal should be wholly independent of Government. A working model is the Independent Television Commission (ITC) which was formed as a result of the Broadcasting Act 1990. Its predecessor, the Independent Broadcasting Authority (IBA), has demonstrated how a statutory body, operating wholly independently of Government, with its own integrity, can maintain public confidence, and thereby promote the industry it is regulating, while performing those tasks at arm's length from Government.

6 A Statutory Tribunal

Introduction

6.1 Chapter 16 of the Privacy Committee's Report set out recommendations for a statutory press complaints tribunal, if a self-regulatory system were found not to work.

6.2 In this chapter I set out my views, which are largely based on those contained in the Privacy Committee's Report, but which take into account some of the observations which have been made on that Report and other evidence which has been submitted to me.

Press Complaints Tribunal

6.3 A tribunal dealing specifically with press matters would have one distinct advantage over the regular courts of law. It would acquire a valuable expertise which is not generally available to those courts which have to operate over a wider range of human activity. I also prefer a tribunal, rather than a court, because it is essential that the complaints body should be accessible to those of limited means and that its procedures should be as simple and as speedy as possible. Like all other tribunals, this tribunal would act wholly independently of Government. It should be supervised by the Council on Tribunals.

6.4 During my Review Mr Clive Soley MP introduced a Private Member's Bill entitled 'Freedom and Responsibility of the Press'. The Bill would introduce an Independent Press Authority with broad responsibilities for promoting the highest standards of journalism in newspapers. The Bill would provide a right to correction of factual inaccuracies, and would empower the new Authority to enforce that right of correction. A statutory press complaints tribunal would, however, need to encompass not only those areas which Mr Soley's Bill seeks to cover, but other matters as well. Further, Mr Soley's Bill, while indicating that the Authority should have responsibility for promoting high standards of journalism, does not, except in relation to matters of accuracy, indicate how such standards are to be attained. My view is that a somewhat different statutory body, with wider functions and powers, would be needed.

Functions and powers of the tribunal

6.5 A statutory press complaints tribunal would need to have these functions and powers:

- (i) to draw up and keep under review a code of practice;
- (ii) to restrain publication of material in breach of the code of practice;
- (iii) to receive complaints (including third-party complaints) of alleged breaches of the code of practice;
- (iv) to inquire into those complaints;
- (v) to initiate its own investigations without a complaint;
- (vi) to require a response to its inquiries;
- (vii) to attempt conciliation;
- (viii) to hold hearings;
- (ix) to rule on alleged breaches of the code of practice;
- (x) to give guidance;
- (xi) to warn;
- (xii) to require the printing of apologies, corrections and replies;

- (xiii) to enforce publication of its adjudications;
- (xiv) to award compensation;
- (xv) to impose fines;
- (xvi) to award costs;
- (xvii) to review its own procedures;
- (xviii) to publish reports; and
- (xix) to require the press to carry, at reasonable intervals, an advertisement to be specified by the tribunal, indicating to its readers how complaints to the tribunal could be made.

6.6 In the paragraphs which follow, I set out my views on several specific matters relating to the tribunal.

Jurisdiction

6.7 The tribunal would need to have jurisdiction over the publishers of all newspapers, national and regional (including free newspapers). This would include the publishers of all magazines (except learned journals) which are published commercially, but would not extend to the publishers of single publications or books. The tribunal would also need to have jurisdiction over editors, journalists and all others involved in the collection of material with a view to its publication by the media.

Code of practice

6.8 The code of practice would need to be statutory. The code would have to be drafted and, when necessary, amended by the tribunal, but in consultation with the press and other interested parties. This is an obligation which should be imposed, by statute, on the tribunal, in much the same way as the Broadcasting Act 1990 imposes an obligation on the Independent Television Commission to produce various codes governing broadcasting services. I would expect the Privacy Committee's proposed code to form the basis of any statutory code. Paragraphs 4iii, 6iii, 7iii, 8v, and 9ii of that code would, however, need to be amended to reflect the various defences listed in paragraph 7.26 of this Review.

6.9 The code would, however, need to be more specific than the code which was proposed by the Privacy Committee. For example, even where there is a broad justification for intruding into the privacy of a particular person, there might well be a case for seeking to limit the full extent of that intrusion. The code would need to cover the extent to which journalistic intrusion into the lives of members of the family and others was justifiable. The code should also reflect the principles underlying the proposed criminal offences set out in paragraph 7.25 of this Review.

Restrain publication

6.10 There are those who take the view that a power to restrain publication would be inappropriate. Mr David Pannick QC, considering the case for the recognition of a legal right of privacy, was reported in *The Times* (7 February 1992) in these terms: 'A solution would be for the law to recognise a right to privacy, with a remedy in damages for any breach. The judiciary would have no power to prevent the imparting of information to the public, but those newspapers which breached the right to privacy would have to compensate the victim with exemplary damages being awarded to penalise the newspaper when there had been a flagrant abuse'. The same line of reasoning would apply to a statutory press tribunal. The concern, as I see it, is that, particularly in cases of intrusion into privacy, once there has been publication, the damage is done, and can never satisfactorily be undone. The argument that the rapid circulation of news around the world by technological advances makes it even more difficult than it used to be for the citizen to restrain damaging publicity is plainly cogent. But it has been forcefully submitted to me that, in the case of newspapers and infringements of

privacy, the fact that an item of news may be in the public domain in one country does not necessarily mean that it should be freely available in all other countries. Each new exposure in a new jurisdiction is a fresh twist in the wound. The *Spycatcher* principle may not be an appropriate analogy. In my view the tribunal should be able to restrain publication of material in breach of the code of practice by means of an injunction against a named individual or company; but no injunction should be granted if the publisher could show that he had a good arguable case corresponding to the defences proposed in paragraph 7.26 of this Review.

Third-party complaints

6.11 Provision should be made for third-party complaints to be received by the tribunal in appropriate cases. Where, however, a third-party complaint is received in a case where those directly affected have declined to make a complaint, the tribunal would need first to ensure that any person directly affected would wish to raise no objection to the tribunal investigating the complaint.

Initiate investigations

6.12 The tribunal should also have the power to initiate its own investigations, whether or not it had received a complaint. The procedures, including the sanctions, should be available, as if a complaint had been received.

6.13 Before initiating any investigation, however, the tribunal would similarly need first to ensure that any person directly affected would wish to raise no objection to the tribunal investigating the matter. In some cases, those who had been victims of a breach of the code might not wish to participate in any investigation, nor even wish there to be any investigation at all. Under those circumstances the tribunal should normally respect their wishes. That would not, however, prevent the tribunal from looking, in a more general way, at a particular issue, making rulings and giving guidance to the press.

Procedures

6.14 The procedures should, at all times, remain flexible. But normally the publisher, or other person concerned, would be required to respond to a complaint within seven days, and this would quickly be followed by a preliminary procedural review. The tribunal should always retain the scope for achieving conciliation. The officers of the tribunal should, at the outset, try to seek agreement between the complainant and the editor. Only if that informal approach failed, should the tribunal resort to more measured and formal procedures.

6.15 At a hearing there should be a power (which might rarely need to be exercised) to take evidence on oath. Legal representation would be permitted, but I would expect that in most cases a complainant would be content to appear in person or perhaps be accompanied by a 'friend'. The surroundings should be less daunting than in court and the procedure would normally be informal, though in cases where compensation and fines were in contemplation, I recognise that it would be difficult to avoid a degree of formality. The tribunal should adopt a predominantly inquisitorial approach rather than the traditional adversarial approach of the courts.

6.16 The reluctance of those who had had their privacy invaded to make a complaint to a public body, which might serve only to fuel press interest in their case, presents a difficulty. It would be possible to provide that such cases should be heard *in camera*. But, in my view, a very strong case would need to be made out to exclude the public. It would have to be shown that there was a greater interest to be served by excluding the public, than the obvious public interest associated with the openness which is and should be a normal part of such proceedings. It would, however, be possible to give the tribunal the power to make an order restraining the press from reporting certain aspects of the case, where the tribunal considered that there was good reason for doing so.

Sanctions

6.17 The tribunal should have the power formally to warn any person who had violated the code.

6.18 The tribunal should have the power to require a publisher to print an apology, and to decide on the edition, location, and content of such an apology. It should have the power to require a publisher to print a correction on the same basis. The tribunal should also have the power to require a publisher to print a reply from a complainant. In such circumstances it would initially be for the complainant and the editor to determine whether the reply was commensurate with the subject-matter of the complaint; but in cases where no agreement could be reached, the tribunal would have the power to adjudicate and to direct an editor to publish a reply. The tribunal should have the power to substitute an amended version of the complainant's reply if it considered that that would be more appropriate.

6.19 The Privacy Committee recommended that the tribunal should not merely be given the power to require a response to its inquiries and to enforce publication of its adjudications (including, when appropriate, a requirement to publish an apology and correction), but that it should also be given the power to award compensation, at least in cases of privacy and inaccuracy. It would be for the tribunal to decide by whom such compensation would be payable. However, unless the complainant could show actual financial loss, the amount of compensation should be limited by statute. This limit should be periodically reviewed.

6.20 It is my view that the statutory tribunal should also have the power to impose fines. A power to award compensation may not alone be sufficient. In extreme cases the tribunal might take the view that a financial penalty, quite apart from any award of compensation, was called for. For a fine to have a suitable deterrent effect, it would need to be pitched at a level which was likely to have a significant impact. In the case of a publisher, I would propose that the maximum level of fine which the tribunal could award should be equivalent to 1% of that publication's net annual revenue. In the case of an individual, it should not exceed level 5 on the standard scale. Fines imposed should be applied to help fund the tribunal.

6.21 Some of those who submitted evidence suggested that there should be a further sanction of suspension of publication of offending newspapers. I do not share this view. It is one thing to prevent the press from publishing material which is in contravention of the code; it is quite another to prevent it from publishing legitimate information because of earlier breaches. In my view this would amount to censorship of an unacceptable kind.

6.22 It would not be unreasonable for the publisher or person concerned to be required to pay costs in cases in which a ruling has made against it; but I would not expect costs to be awarded against complainants unless their complaints were frivolous or vexatious or they had unreasonably refused conciliation.

Appeal

6.23 There should be a right of appeal, with leave, to the Supreme Court of Judicature (either to the High Court of Justice or to the Court of Appeal) against an order restraining publication, an order for compensation, an order imposing a fine, and any rulings on which any of those orders were based, or on any point of law.

Review

6.24 The tribunal should be obliged to review its own procedures from time to time to ensure that it remained an effective regulator.

Report

6.25 The tribunal, as a statutory body, should be obliged to publish an annual report to Parliament. It should also be required to publish regular, possibly quarterly, reports of complaints which it had received, and the action it had taken to deal with them. In addition, the tribunal should be empowered to publish such other reports as it felt necessary, including reports of any self-initiated inquiries, and general advice given to the press.

Advertisement

6.26 The tribunal should have the power to require the press to carry, at reasonable intervals, an advertisement to be specified by the tribunal, indicating to its readers how complaints to the tribunal could be made.

Waiver

6.27 A complainant would obtain legally enforceable redress before the Press Complaints Tribunal (unlike the Press Complaints Commission). The complainant might accordingly have two overlapping remedies, one before the tribunal and one before the courts. The Privacy Committee recommended that anyone who complained to the Press Complaints Tribunal should thereby waive his or her right to sue in the regular courts of law. I see no reason now to take a different view.

Membership of the tribunal

6.28 The Privacy Committee recommended that, since the tribunal would need judicial status, its chairman should be a judge or senior lawyer appointed by the Lord Chancellor. There would need to be provision for the appointment of one or more deputy chairmen. For hearings, the chairman would sit with two members drawn from a panel who could be appointed by the Secretary of State for National Heritage (as the responsible departmental minister). It would be desirable for at least one of the members at each hearing to have experience of the press at senior level. The chairman and members would normally be appointed for renewable three-year terms.

Staff

6.29 Because of its conciliation function, the tribunal would need a larger and more senior administrative staff than is usual for tribunals. The Privacy Committee considered that the staff would need to be of high calibre and remunerated accordingly. Although, as tribunal staff, they would be civil servants, the Committee considered that a significant proportion would need to be directly recruited from outside, from among those with the first-hand experience of the press, possibly on fixed-term contracts. I see no reason now to take a different view.

Funding of the tribunal

6.30 Unlike a system of self-regulation paid for by the industry, a tribunal would have to be publicly-funded, though it should be possible to devise a system of financing the tribunal along the lines of that for the Independent Television Commission and the Broadcasting Complaints Commission, where the regulator's costs are effectively paid by those whom they regulate through a levy. For example, section 4 of the Broadcasting Act 1990 empowers the Independent Television Commission to include as a condition of the licences it awards for broadcasting services a condition requiring the payment by the licence holder, to the Commission, of a fee in accordance with a tariff determined by the Commission as an appropriate contribution towards meeting the sums which the Commission regards as necessary in order to discharge its duty. In the case of broadcasters, the obligation to pay a fee is part of the licence condition. I do not propose that newspaper publishers should hold licences from the statutory

tribunal. But I see no reason why the legislation itself should not empower the statutory tribunal to determine the finances it requires, and to apportion them appropriately to all publications within its remit and for the legislation to oblige the publisher to make appropriate payment.

Media regulation

6.31 I am aware that in some respects the functions of the statutory press tribunal mirror those of the broadcasting regulatory bodies, and in particular the Broadcasting Complaints Commission. A case might be made for having one regulatory body responsible for the press and the broadcasters; but the Broadcasting Complaints Commission did not advocate this course. Since my terms of reference did not extend to broadcasting, I did not feel I could pursue this matter. In any event, it seems to me that the inherent differences in the two media suggest that the regulatory bodies themselves ought to be separate, and to have distinct functions.

7 Further Measures

Physical intrusion

7.1 The Privacy Committee's Report recommended (paragraph 6.33) that three forms of physical intrusion should be criminal offences in England and Wales:

- (i) entering private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication;
- (ii) placing a surveillance device on private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; and
- (iii) taking a photograph, or recording the voice, of an individual who is on private property, without his consent, with a view to its publication and with intent that the individual shall be identifiable.

7.2 The Privacy Committee also recommended (paragraph 6.35) that it should be a defence to any of the proposed offences that the act was done:

- (i) for the purpose of preventing, detecting, or exposing the commission of any crime, or other seriously anti-social conduct; or
- (ii) for the protection of public health or safety; or
- (iii) under any lawful authority.

7.3 The Privacy Committee recommended that an individual having a sufficient interest should be able to apply for an injunction against the publication of any material obtained by means of any of these criminal offences or, if the material had already been published, for damages or on account of profit.

7.4 The Privacy Committee made it clear that these offences should be brought into force immediately, and were not offered as an alternative to any revised form of self-regulation. Many of those who submitted evidence to me, but who expressed doubts about the wisdom of introducing a statutory regime of regulation or a new statutory tort of infringement of privacy, were nevertheless of the view that physical intrusion should be outlawed. On 14 December 1992 the *Independent* and on 16 December 1992 the *Daily Telegraph* both supported the introduction of criminal offences. I remain of the view that the criminal offences should be enacted. The offences do not attempt to cover every wrong associated with physical intrusion. But they do cover the most blatant forms of physical intrusion and, if enacted, would make clear forms of behaviour which were wholly unacceptable. The Privacy Committee took the view that its recommendations relating to the Press Complaints Commission could cover, through its code of practice, the wider issues. The proposed criminal offences, by contrast, are directed more particularly to the obtaining of information with a view to its publication, rather than with its actual publication.

The offender

7.5 The criminal offences, as proposed, would catch the person who enters private property, places a surveillance device on private property, or takes a photograph or records the voice of someone who is on private property. In other words, the offences would catch, quite specifically, the person who physically intrudes. These are not offences which could be committed only by journalists. They would catch any intruder whose intent was to obtain personal information with a view to its publication, for example a freelance journalist or a photographer who offered to sell material to the press.

7.6 Some have argued that it is curious that the offences should apply to those who collect the information, but not to those who may subsequently make use of that information by publishing it. The Privacy Committee considered this point (paragraph 6.37) but concluded that the case had yet to be made for an additional offence of publication. Further, any editor or proprietor could, if circumstances warranted it, be charged as an accessory or with conspiracy. Moreover, the Committee concluded that the individual concerned would be able to apply for an injunction restraining the publication of any material obtained by means of any of the criminal offences or, if the material had already been published, for damages for any loss suffered or an account of profits.

7.7 The criminal law in Great Britain has historically applied only when the *actus reus* has taken place here. As proposed, no criminal offence, under our law, would be committed here if the private property in question were outside the jurisdiction of our courts. Thus, to take a recent example, the photographer who took the photographs of the Duchess of York at a private villa in the south of France would not have been caught by the proposed criminal offences. However, it would be possible to provide that the associated civil remedy would be available in circumstances where, had the private property been on British soil, a criminal offence would have been committed.

Private property

7.8 The Privacy Committee defined private property (in paragraph 6.34 of the Report) as any private residence, together with its immediate curtilage (garden and outbuildings), but excluding any adjacent fields or parkland. It also covered hotel bedrooms (but not other areas in a hotel) and those parts of a hospital or nursing home where patients were treated or accommodated.

7.9 I also consider that a good case can be made for extending the definition to include school premises.

Consent

7.10 Consent should not have to be obtained expressly: it is sufficient if it is implied. For example, a reporter who walks up the path to the front door of a house to make proper inquiries would not thereby commit a criminal offence, simply because he had not first obtained express permission to do so. In the absence of any notice to the contrary, householders give their implied consent to anyone to knock on the door for any proper purpose. It should, however, be an offence for a person (with the necessary intent) who, having lawfully entered private property, failed to leave when asked to do so.

Lawful occupant

7.11 In the first two proposed offences (entering private property, and placing a surveillance device on private property) the consent required is the consent of the lawful occupant. Some have submitted that the consent in each case should, as in the third offence (taking a photograph or recording a voice), be that of the person (or persons) under journalistic investigation, and about whom the personal information is to be obtained. However, the first two offences were designed to prevent physical intrusion to obtain personal information. The person whose privacy is invaded is that of the lawful occupant.

Publication

7.12 In order for each of the criminal offences to be proved, it would need to be shown that the information, photograph or recording was obtained 'with a view to its publication'. It therefore follows that if the defendant could show that the information was intended for research purposes, background information, or simply as supporting evidence for the facts reported, but with no view to publication of the information itself, no offence would have been committed.

7.13 'Publication' means publication by the media. Publication, in this context, would not cover the simple act of passing the material from one person to another person. Publication would include material which was broadcast, or included in any commercially published material. In the part of this Review relating to recording (paragraph 7.16), however, I make it clear that 'publication' of a recording should be limited to making available the sound track of the recording, and would not extend to a publication of the transcript of that recording.

Surveillance device

7.14 The second offence, as proposed by the Privacy Committee, required a surveillance device to be 'placed' on private property, without consent of the lawful occupant, with intent to obtain personal information and with a view to its publication. It is, however, possible for a surveillance device to be used effectively at considerable distances. It has been pointed out to me that to restrict the prohibition to those devices which have been 'placed' on private property, may not meet the knub of the problem. It has been submitted to me that there should also be an offence of using a surveillance device with a similar intent; and I accept that submission. The consent required, however, would be the consent of the person (or persons) under journalistic investigation. In this context I use the term 'surveillance device' to mean any equipment which enables personal information to be obtained without the knowledge of the person concerned or the lawful occupant, as the case may be.

Photograph

7.15 In the case of taking a photograph of an individual on private property, without consent to the taking of the photograph, it would not be an offence unless there was an intent to identify a particular individual. So, for example, no offence would be committed if a photograph were taken of a crowd of people on private property, if the intent were simply to illustrate the crowd. An offence would only be committed if the photograph had been taken with the specific intent of identifying a particular individual or individuals.

Recording

7.16 This offence also covers recording the voice of an individual who is on private property, without consent to the making of the recording, with a view to its publication, and with intent that the individual shall be identifiable. The offence would not cover circumstances in which a journalist might record a telephone conversation he had with another person, who might be on private property, even though consent had not been obtained. The act to be outlawed is the surreptitious recording of a conversation to which the person making the recording was not a party. For the offence to be proved, it would have to be shown that the recording was made with a view to its publication and with intent that the individual should be identifiable. In this context 'publication' means making generally available the sound track of part or all of the recording.

Defences

7.17 The Privacy Committee recommended that there should be certain limited defences to the proposed offences. It was their view that these defences should not be extended to a general 'public interest' defence, but should be more narrowly drawn. It has been submitted to me that no 'public interest' defence should be available. However, my view is that while the behaviour which should be outlawed represents an unjustifiable physical intrusion, there are circumstances in which such intrusion can be justified on the basis of narrowly drawn 'public interest' considerations. I have therefore concluded that the defences identified by the Privacy Committee should be available, but, having regard to submissions made to me, I take the view that some additions to them should now

be made. The Privacy Committee's Report recommended that it should be a defence to any of the proposed offences that the act was done:

- (i) for the purpose of preventing, detecting or exposing the commission of any crime or other seriously anti-social conduct;
- (ii) for the protection of public health or safety; or
- (iii) under any lawful authority.

7.18 A further defence, as set out in Appendix Q 4 iii of the Privacy Committee's Report, should be added:

- for the purpose of preventing the public from being misled by some public statement or action of the individual concerned.

7.19 I also received evidence to the effect that the proposed criminal offences, as outlined in the Privacy Committee's Report, would seriously impede the work of responsible investigative journalism.

7.20 I am aware that, assuming there was *prima facie* evidence of an offence (as proposed) having been committed, none of the defences proposed by the Privacy Committee might have been of any avail in several of the recent highly-publicised cases relating to the private lives of members of the Royal family or Members of Parliament. The Privacy Committee was not focusing principally on people in the public eye. Accordingly, I have considered whether there should not be a further specific 'public interest' defence. As I have set out in paragraph 4.38, I have concluded that while, *prima facie*, everyone is entitled to protection of their privacy, those persons discharging public functions must be prepared to expect the level of that protection to be reduced to the extent, but only to the extent, that it is necessary for the public to be informed about matters directly affecting the discharge of their public functions. I would, therefore, recommend that a further defence should be available:

- for the purpose of informing the public about matters directly affecting the discharge of any public function of the individual concerned.

Anti-social conduct

7.21 The Privacy Committee was of the view that it would be too harsh to restrict the first defence to the prevention, detection or exposure of crime alone. The Privacy Committee accordingly proposed that 'seriously anti-social conduct' which though not in itself criminal, was so seriously socially offensive, that it should also provide the basis for a defence. But what does it mean? Mr Michael Leapman, in his book *Treacherous Estate*, records the instance in the career of Peter Rachman, the slum landlord whose name had featured in the *Profumo* case. Rachman had developed a technique of buying run-down property cheaply, because it was partly occupied by statutory tenants, who were hard to remove legally. He filled the flats with people whom he expected would enjoy noisy parties. This provoked the tenants into moving elsewhere. Rachman then got rid of the new tenants and was left with empty properties that he could sell at a large profit. That type of behaviour provides a striking example of 'seriously anti-social conduct'. Sir John Donaldson (now Lord Donaldson of Lynton), the Master of the Rolls, had used the expression 'anti-social behaviour', in this context, in *Francome v Mirror Group Newspapers* [1984] 1 WLR 892. The Privacy Committee adapted it, in its proposed code of practice, to 'seriously anti-social conduct'. The expression also features regularly in the industry's code of practice. Nevertheless, it has been submitted to me that magistrates might have great difficulty in deciding, in any particular case, whether the conduct under consideration was 'seriously anti-social conduct'; and I accept that it might be considered too difficult a concept for criminal legislation.

Prosecution

7.22 A prosecution for any of these criminal offences should be brought only with the consent of the Director of Public Prosecutions.

Burden and standard of proof

7.23 The burden of proving a defence to the criminal offences should fall on the defendant, but would be discharged on a balance of probabilities.

Penalties

7.24 The Privacy Committee did not specifically consider what penalties would be appropriate. In my view the offences should all be summary offences (carrying a maximum financial penalty of the maximum of the level 5 fine—currently £5,000) and should not carry the penalty of imprisonment. The offences should not carry a power of arrest; this would be inappropriate if the maximum penalty were a fine. If the police had reason to believe that a journalist was committing a criminal offence, they could report the person, and existing powers of enforcement would probably be adequate.

Summary of offences

7.25 I accordingly recommend (recommendation 2) that the criminal offences proposed by the Privacy Committee in paragraph 6.33 of its Report should (with modifications) now be enacted:

The following should be criminal offences in England and Wales:

- (a) entering or remaining on private property without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; or
- (b)
 - (i) placing a surveillance device on private property without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; or
 - (ii) using a surveillance device (whether on private property or elsewhere) in relation to an individual who is on private property, without the consent of the individual to such use, with intent to obtain personal information about that individual with a view to its publication; or
- (c) taking a photograph, or recording the voice, of an individual who is on private property, without his consent to the taking or recording, with a view to its publication and with intent that the individual shall be identifiable.

7.26 I recommend that it should be a defence to any of the proposed offences that the act was done:

- (a) for the purpose of preventing, detecting or exposing the commission of any crime or other seriously anti-social conduct; or
- (b) for the purpose of preventing the public from being misled by some public statement or action of that individual; or
- (c) for the purpose of informing the public about matters directly affecting the discharge of any public function of the individual concerned; or
- (d) for the protection of public health or safety; or
- (e) under any lawful authority.

Civil remedy

7.27 The Privacy Committee's Report also recommended that an individual having a sufficient interest should be able to apply for an injunction against the publication of any material obtained by means of any of the criminal offences, or, if the material had already been published, for damages or an account of profits. I recommend that the High Court should have the power, on the application of the individual concerned, to grant an injunction restraining the publication of any information, photograph or recording obtained by means of any act which constitutes one of the proposed offences; and if the individual to whom it relates should have a right of action against any person who publishes it for any loss

suffered by that individual and for an account of any profits arising to that person, as a result of publication. As the Law Society has pointed out to me, if criminal sanctions are to be introduced to prevent the physical intrusion into an individual's private life, it is important that the individual affected by the mischief should be given a civil remedy to obtain compensation for any distress or damage which that individual may have suffered.

7.28 If the commission of an offence could properly be inferred, even if it had not been possible to prove the offence to conviction, the associated civil remedy should still be available.

7.29 The civil remedy should be available if the act set out in any of the proposed criminal offences took place outside England and Wales, if it was done with a view to publication in England and Wales.

7.30 The defences which would be available to the criminal offences would also be available as defences to the civil remedy.

Legislation

7.31 I have sought to provide draft clauses which could give effect to the criminal offences I have outlined. These are set out in Appendix D.

An alternative approach

7.32 Since, however, I am recommending the introduction of a statutory complaints tribunal, an alternative (though, I believe, less satisfactory) approach would be to incorporate the substance of the proposed criminal offences into the statutory code which the statutory tribunal (with its power to fine) would administer.

Tort of infringement of privacy

7.33 The Privacy Committee recommended (recommendation 10) that a tort of infringement of privacy should not then be introduced. The Committee considered that it would be possible to define a satisfactory tort of infringement of privacy, and the Committee's grounds for recommending against a new tort did not include difficulties of definition. The Committee concluded that an overwhelming case for then introducing a statutory tort of infringement of privacy had not so far been made out and that the better solution lay with the measures set out elsewhere in the Report.

7.34 The Committee, however, expressly made its recommendation on the assumption that the improved scheme for self-regulation would be made to work, and that, should this fail, the case for a statutory tort of infringement of privacy might have to be considered. Since I take the view that the Press Complaints Commission is not operating as an effective regulator of the press, and am recommending the introduction of a statutory regime, reconsideration of the case for the introduction of a new statutory tort is now necessary.

7.35 The evidence submitted to me and the other material which I have read raises a wide range of options. In summary, there are those (including the Press Complaints Commission) who have contemplated the possibility of there being a statutory regulatory regime as well as a tort of infringement of privacy. Alternatively, there are those that have taken the view that it is in the protection of privacy that the Press Complaints Commission has failed, and is bound to fail, and that, accordingly, there is need for a law which will adequately protect privacy, but which need go no further. Alternatively, there are those who take the view that the solution would be to introduce a new tort, but only if that were to be balanced by a Freedom of Information Act. Finally, there are those who would be opposed to any new tort on any terms (or to effect being given to such a tort by any statutory regulatory regime), on the grounds that it would result in censorship and a destruction of the freedom of the press. To some, the withholding of the publication of what is true, subject to certain closely-defined exceptions, is wholly unacceptable.

7.36 It has been urged on me that I should have particular regard to the law of other countries, and I have done this. Whilst the Review was in progress a court in France awarded damages to the Duchess of York in respect of the photographs which had been taken of her (see paragraph 4.52) in contravention of their laws protecting privacy. Why should there not be similar relief here? The Privacy Committee expressed the view (paragraph 2.6 of the Report) that measures adopted in one country might not travel well to another with different history, culture, tastes and constitutional arrangements. I see no reason now to take a different view. Further, the introduction of a statutory regulatory regime should provide adequate remedies for unjustified infringements of privacy, at least by the press.

7.37 A tort of infringement of privacy could not sensibly be restricted simply to the press. It would plainly have to cover the whole of the media. And, perhaps more significantly, it would have to cover a wide range of human and technological activity. I doubt whether this has been fully taken into account by those who presently advocate the introduction of a new tort. The wide range of activities which the Younger Committee had to consider illustrates the point; and that Committee reported over 20 years ago. Technological development has not stood still in the intervening years.

7.38 The terms of reference of the Privacy Committee focused on the measures needed to give further protection to individual privacy from the activities of the press: they did not extend beyond the press. My present terms of reference focus on the effectiveness of self-regulation of the press: again they did not extend beyond the press. In my view, before any wide-ranging new tort of infringement of privacy could be introduced here, it would be necessary for the proposed tort to receive more detailed consideration than it has during the last two decades. As the Newspaper Society submitted to me, 'Any such change should be presaged by a new wider debate about privacy laws and the nature of defences to privacy actions, freedom of expression, and the reform of media law'. I have also noted the Lord Chancellor's recent proposal to set up a summary procedure in libel actions.

7.39 Should the introduction of a statutory regime of press regulation await the outcome of a consideration of new tort of infringement of privacy? In my view it should not.

7.40 First, the pressing social need which has to be addressed is protection against unjustifiable infringements by the press. As I have already indicated in paragraph 6.3, I am of the view that this is best handled by a tribunal which would have jurisdiction to deal specifically with press matters. A press tribunal would acquire a valuable expertise which is not generally available to the regular courts of law. A tribunal would also be more accessible.

7.41 Secondly, if, after consideration, the Government of the day should reach the conclusion that there was a need for a wide-ranging tort of infringement of privacy, that would not do away with the need for a press tribunal. The tort would cover all aspect of infringement of privacy: the tribunal would cover all aspects of press regulation. There would inevitably be some overlap. As I have already indicated in paragraph 6.27, a complainant who had two legally enforceable redresses would similarly have to elect which to pursue.

7.42 The matter, however, appears to me to be sufficiently serious and worthy of detailed consideration that I recommend (recommendation 3) that the Government should now give further consideration to the introduction of a new tort of infringement of privacy.

Data Protection Act 1984

7.43 It has been pointed out to me that the Data Protection Act 1984 may already provide some remedies against infringement of privacy by the press. The Act is intended to regulate the use of automatically processed information relating to individuals and the provision of services in respect of such information. It defines "personal data" to mean data (capable of being processed by

equipment operating automatically) consisting of information which relates to a living individual who can be identified from that information, including any expression of opinion about that individual. It also defines "processing", in relation to data, to amending, augmenting, deleting or re-arranging the data or extracting the information constituting the data, but does not apply to any operation performed only for the purpose of preparing the text of documents.

7.44 The data protection principles contained in Schedule 1 of the 1984 Act are these:

- (i) The information to be contained in personal data shall be obtained, and personal data shall be processed, fairly and lawfully.
- (ii) Personal data shall be held only for one or more specified and lawful purpose or purposes.
- (iii) Personal data held for any purpose or purposes shall not be used or disclosed in any manner incompatible with that purpose or those purposes.
- (iv) Personal data held for any purpose or purposes shall be adequate, relevant and not excessive in relation to that purpose or those purposes.
- (v) Personal data shall be accurate and, where necessary, kept up to date.
- (vi) Personal data held for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- (vii) An individual shall be entitled:
 - (a) at reasonable intervals and without undue delay and expense
 - to be informed by any data user whether he holds personal data of which that individual is the subject; and
 - to access to any such data held by data user; and
 - (b) where appropriate, to have such data corrected or erased.
- (viii) Appropriate security measures shall be taken against unauthorised access to, or alteration, disclosure or destruction of, personal data and against accidental loss or destruction of personal data.

7.45 Many newspapers, and probably all national newspapers, are today produced using electronic technology. It could be argued that this technology is used solely for the purpose of preparing the text of documents (in this case newspapers). However, there is good case for saying that the technology is capable of greater processing than that, and that accordingly personal information held electronically by newspaper publishers is personal data for the purposes of the 1984 Act. Accordingly, the principles of that Act would apply to the press. In particular, section 22 of the 1984 Act provides that an individual who is the subject of personal data held by a data user and suffers damage by reason of the inaccuracy of that data shall be entitled to compensation from the data user for that damage and for any distress which the individual has suffered by reason of the inaccuracy.

7.46 It seems to me that the full potential impact of the Data Protection Act 1984 on the use by the newspaper industry of personal data, held and processed electronically, has not been fully realised, and I recommend (recommendation 4) that the Government should now give further consideration to the extent to which the Data Protection Act may contain provisions which are relevant for purposes of misrepresentation or intrusion into personal privacy by the press.

Reporting restrictions

7.47 As I have pointed out in paragraph 3.14, the legislation has partially given effect to the recommendations concerning legal restrictions on press reporting. In substance, recommendation 6 of the Privacy Committee's Report (concerning the extension of the statutory prohibition on identifying rape victims to cover the victims of sexual assaults) has been enacted.

7.48 I therefore recommend (recommendation 5) that, in order to give effect to the recommendations of the Privacy Committee in this respect, the Government should now give further consideration to amending the legislation on the non-identification of minors in England and Wales to eliminate any inconsistencies or uncertainties (recommendation 5 of the Privacy Committee), and that, in any criminal proceedings in England and Wales, the Court should have the power to make an order prohibiting the publication of the name and address of any person against whom the offence is alleged to have been committed, or of any other matters likely to lead to his or her identification (recommendation 7 of the Privacy Committee).

Jigsaw identification

7.49 The Privacy Committee recommended (recommendation 8) that after consulting the press and broadcasting authorities, the Press Complaints Commission should issue early guidance on jigsaw identification. No such guidance has yet been issued although I understand from the Press Complaints Commission and from Pressbox that steps have been taken to consult trade associations. This is a matter which clearly needs to be taken forward urgently.

Interception of telephone transmissions

7.50 During the course of my review there were two occasions where private telephone conversations were allegedly intercepted, and the contents of those conversations published in whole or in part.

7.51 The first of these concerned alleged telephone conversations between Mr David Mellor, then Secretary of State at the Department of National Heritage, and Ms Antonia de Sancha. It was claimed that the owner of the flat which Ms de Sancha made use of had allowed a reporter from *The People* to monitor the telephone calls which Mr Mellor made to Ms de Sancha (see paragraphs 4.65–4.68).

7.52 In the second case, a tape recording of an alleged conversation between the Princess of Wales and a male friend was published in *The Sun*, and made available on a premium rate telephone service. On this occasion it was alleged that, as the male caller had been using a mobile telephone, the conversation had been recorded off-air (see paragraph 4.53).

7.53 Both these instances raise questions of legality and propriety, particularly when the contents of such conversations are made public.

7.54 Section 1 of the Interception of Communications Act 1985 makes it an offence intentionally to intercept a communication in the course of its transmission by means of a public telecommunications system (as defined in the Telecommunications Act 1984) except where:

- (i) interception is in obedience to a warrant issued under the Act;
- (ii) there are reasonable grounds for believing that one of the parties to the communication has consented to the interception;
- (iii) the communication is intercepted for purposes connected with the provision of public telecommunications services or with the enforcement of any enactment relating to these services; or
- (iv) the communication is being transmitted by wireless telegraphy and is intercepted with the authority of the Secretary of State for purposes connected with the issue of a license under the Wireless Telegraphy Act 1949 or the prevention or detection of interference with wireless telegraphy.

7.55 The offence relates solely to the interception of communications. This term is not defined in the Act. No further offence is committed under the Act if the communication is recorded, nor does the Act provide offences relating to the publication of intercepted material. Prosecutions have rarely been made under the 1985 Act. There were four prosecutions in England and Wales in 1988 and one in 1990.

7.56 In any individual case, there may be particular difficulty in adducing evidence that a call has been intercepted. For example, even where a tape purporting to be a recording of a telephone call exists, it may require the parties to the call to confirm its authenticity before a prosecution could be brought.

7.57 Under section 5(b) of the Wireless Telegraphy Act 1949 (as amended), it is an offence if a person, otherwise than under the authority of the Secretary of State or in the course of his duty as a servant of the Crown, does either of the following:

- (i) uses any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Secretary of State to receive; or
- (ii) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person.

7.58 It is therefore an offence under this section of the Act to monitor without authority the radio link between a cellular hand set and the cellular operator's base station or disclose the content of any message received.

7.59 However, the cellular operator's telecommunications systems have been designated by the Secretary of State for Trade and Industry under section 9(1) of the Telecommunications Act 1984 as public telecommunications systems. As a result, the unauthorised monitoring of such communications is also an offence under section 1 of the Interception of Communications Act 1985.

Mobile telephones

7.60 Mobile telephones are provided in the UK by Vodafone Ltd and Cellnet (in which BT has a majority shareholding) using analogue technology. Mobile telephone calls are susceptible to monitoring by the use of scanners and other radio receivers. I understand that new mobile systems use digital technology and support a range of advanced services and features, one of which is a sophisticated encryption system. This encryption will be beyond the means of casual users of radio scanners to break. It may be that this will mean that the interception of such communications would no longer present a problem.

Interception

7.61 The Wireless Telegraphy Act 1949 is primarily concerned with ensuring that unlawful radio transmissions do not interfere with those which have been authorised. Receive-only apparatus (which includes the type of scanners used for interception of cellular communications) normally poses no interference threat and is exempted from the need to be licensed under section 1 of the Wireless Telegraphy Act 1949 by the Wireless Telegraphy Apparatus (Receivers) (Exemption) Regulations 1989 (SI 1989/123). There are no restrictions on the manufacture and sale of such equipment. Scanners can be lawfully used for receiving messages clearly designed for general reception, for example, authorised sound broadcasts, messages sent by radio amateurs and Citizens' Band Radio and, at sea, weather or navigation information. Persons employed within the radio communications industry also need to use scanners.

7.62 Under section 7 of the Wireless Telegraphy Act 1967, it is possible for the Secretary of State to make an order prohibiting the manufacture, sale, letting on hire, possession and importation of wireless telegraphy apparatus for the purpose of preventing or reducing the risk of interference to other such apparatus. As scanners are inherently incapable of transmitting they do not normally pose an interference threat and section 7 would not be applicable. Primary legislation would therefore be needed to effect a ban, but any such restriction would run the risk of being challenged under the Treaty of Rome as a barrier to trade.

7.63 Neither would it be practical to contemplate the licensing of scanners. There is already a very large number of scanners freely in circulation both in the UK and other EC Member States. The existence or use of a scanner cannot be technically detected. Consequently licence evasion could not realistically be combatted. Adding a new offence of unlicensed use would, in itself, achieve little; use to intercept telephone conversations is already illegal. The Home Office told me that any proposal to record at the point of sale details of the purchaser of a scanner for the purpose of licensing would also be undermined by the large number already in circulation and the very active second-hand market.

7.64 Section 1 of the Interception of Communications Act 1985 makes it an offence intentionally to intercept a communication in the course of its transmission by means of a public telecommunications system. The definition of a public telecommunications system is provided in section 10(1) of the Act as having the same meaning as in the Telecommunications Act 1984.

7.65 Section 10(2) of the Interception of Communications Act provides that, in addition, the Act should apply to an external communication—that is where one end is outside the British Islands—even though they are not in the course of transmission by means of a public system, if the mode of transmission of the communication identifies it as a communication which is to be transmitted by means of a public system. This provision ensures that the Act cannot be circumvented by intercepting at a point outside the United Kingdom public network UK calls sent to or received from overseas. It was not intended that it should have any other relevance to domestic systems.

7.66 All telecommunications systems, whether public or private, require a licence issued by the Secretary of State under section 7 of the Telecommunications Act 1984. Licences may be granted to all persons, to persons of a class or to a particular person. They may authorise the connection to a telecommunications system of another system or of apparatus. Section 8 describes additional conditions to be included in licences to which the section applies. Section 9 permits (but does not require) the Secretary of State to designate as a public telecommunications system a system run under a licence containing such conditions.

7.67 The following systems have been designated under section 9:

- (i) The BT, Kingston and Mercury fixed networks.
- (ii) The Vodafone and Cellnet mobile systems.
- (iii) The Hutchinson Microtel and Mercury Personal Communications Networks.
- (iv) About 120 cable television companies' systems.

7.68 The Secretary of State is considering applications for new telecommunications licences from a number of companies wishing to run systems which are likely to be designated as public telecommunication system in due course. The period of publication required by the Act to take place before licences are issued for such systems has recently been completed in the case of four new operators.

7.69 The systems which may be run are defined in each licence. In the case of fixed systems, the operators' systems have been defined as ending at a network termination point. In domestic premises, this usually means the master socket on the wall. In the case of the mobile networks, the licensed systems consist of radio base stations and switches. Customers' handsets are operated under a general licence applying to all persons. The mobile operators have applied for licences allowing them to run fixed systems in addition to their mobile networks.

7.70 Interception of communications, once the signal has left the public network, or before the signal has reached the network, is thus not caught by section 1 of the Interception of Communications Act 1985, since at that point the communication is not in the course of its transmission by means of a public system. There may be issues of trespass arising from the action which is needed to install the device and, conceivably, of damage to the intercepted system. While

the interception of communications beyond the limits of the public telecommunication system does not usually give rise to any offence under the 1985 Act, there are offences under section 5 of the Telecommunications Act 1984 of running an unlicensed system, connecting apparatus or another system not authorised to be connected to a particular licensed system or providing services not authorised to be provided which could arise. Prosecutions are undertaken by either the Director General of Telecommunications or the Secretary of State. No prosecutions have ever been undertaken under this section. However, the two main class licences, under which branch systems or private or domestic systems are run, in their present form, make the connection of apparatus not approved for connection to a public telecommunication system to which that system is connected to a breach of a licence condition rather than an unauthorised connection. It is still possible to postulate circumstances in which an offence under section 5 might be committed. Obtaining evidence after the event would be difficult, as it would involve finding the exact apparatus used and being able to show the positions of the different pieces of apparatus and the distances between them.

7.71 Abstraction of electricity is a specific offence under section 13 of the Theft Act 1986. In these circumstances, other than in the case of an optical fibre, a small amount of electricity might possibly be treated as being used without authority.

7.72 Most offices are served by switches which are connected to the public network but are not part of it. Unless section 10(2) applied, the Interception of Communications Act would not apply to an interception carried out by whatever means at any point on a private telecommunications system.

The way forward

7.73 It appears that the alleged interception of the telephone conversation between Mr Mellor and Ms de Sancha was lawful. But it also appears that the interception of the telephone conversation allegedly between the Princess of Wales and a male friend may well have been unlawful. However, in order to bring a successful prosecution, it would have been necessary to establish the identity of the callers, and establish that they did not intend their conversation to be intercepted. There appear to be gaps in the legislation designed to protect private telephone conversations. Such gaps provide fertile ground for journalists. The full extent of this matter, however, is one which extends beyond my terms of reference. I note that there appears to be a *prima facie* case for strengthening the law in this area, and I recommend (recommendation 6) that the Government should now give further consideration to the legislation covering interception of telecommunications with a view to identifying all significant gaps and determining whether any further legislation is needed.

8 Conclusion

8.1 The Privacy Committee hoped that the new regime of the self-regulatory Press Complaints Commission would be effective, and the Government shared that view. The sanction of the prospect of statutory intervention, which was plainly spelt out, should have been powerful enough.

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

8.3 I do not doubt that my recommendations will be met with claims that they will result in a censorship and gagging of the press, that they will prevent responsible investigative journalism and that they will only serve as a shield for the wicked.

8.4 Since the name of the late Mr Robert Maxwell may be on many lips, it will perhaps be as well also to remember that he was amongst the most ardent of advocates that the press should be left to regulate itself.

8.5 The Press Complaints Commission in its first annual report, contemplating the Privacy Committee's proposals for a statutory regime (should self-regulation fail), wrote this: 'Such a scheme would indeed give governments extensive means to emasculate the press, whatever safeguards might accompany its introduction, such as they have not possessed for centuries.'

8.6 I do not believe that the statutory regime which has been proposed will do any such thing. If I thought that it would, I would not recommend it.

8.7 My recommendations are designed to make a positive contribution to the development of the highest standards of journalism, to enable the press to operate freely and responsibly, and to give it the backing which is needed, in a fiercely competitive market, to resist the wildest excesses. They are not designed to suppress free speech, or to stultify a vibrant and dynamic press. They are designed principally to ensure that privacy, which all agree should be respected, is protected from unjustifiable intrusion, and protected by a body in which the public, as well as the press, has confidence.

David Calcutt
Queen's Counsel

Secretariat:
Robert Eagle
Christine Knox
Norma Johnson

Appendix A

List of Witnesses

Abra, Jim
Alam, Shamsul
Allan, G
Allen, Mr F S
Anderson, J M
Anson, Charles
Anton, T A
Archer, Peter
Archer, C P
Arnold, W J K
Arnold-Baker, Professor Charles
Article 19
Ash, Nigel
Ashton, Joe, MP
Ashwell, A
Ashwin, Reverend Vincent G
Association of British Editors
Association of Directors of Social Services
Austin, Mike
Australian Press Council

BBC
Badman, Simon
Baker, David
Baldwin, Charles F
Barber, G M
Barefoot, T
Barendt, Professor E M
Barker, Alan H
Barker, Paul C
Barnes, John R W
Barnett, Reverend Neville J
Barrow, David
Barry, A S
Bartley, Mrs E K
Barwick, J D
Bascombe, H R J
Bawdock, W
Belsey, Andrew
Bennett, Mrs Eileen
Bennett, John
Bentley, Neil
Beresford, G G
Bernard, Derek
Berwick, R K
Birch, Mrs Mary
Birmingham and Midshires Building Society
Bizett, Margaret
Black, Miss Sheila , OBE
Blackwell, Joe
Blom-Cooper, Sir Louis, QC
Blunt, S W
Booth, W

Booth, Anne
 Borzello, Bob
 Bottomley, Peter, MP
 Bowen, Mrs B
 Bowmer, Miss Judith
 Boxx, Group Captain P J
 Bracey, Reverend Murray J M
 Brazier, Professor Margaret
 Breaky, James
 Brewer, Mrs Irene
 Broadbent, Walter
 Broadcasting Complaints Commission
 Brooks, R B
 Brown, R C
 Bruce, Miss Margaret
 Bruce, V M S
 Bruell, Mrs A J W
 Buchanan, Mrs R B G
 Burdett, Bryan
 Burton, John
 Burton, Stephen J
 Bury Pensioners Association
 Butcher, Mr C
 Butler, Mrs Dorothy

 Cadwallader, Ms Jan
 Cafferkey, P C
 Cambridge Evening News
 Campaign Against Corrupt Government
 Campaign for Press and Broadcasting Freedom
 Campbell, Helen
 Canton, M H
 Carter, Godfrey, CBE
 Carter-Ruck, Peter
 Cartwright, John
 Cary, Sir Roger
 Cassidy, Terence
 Cattell, Mr A J
 Causer, Mr and Mrs
 Chadwick, Ruth
 Challice, Mrs E
 Chalmer, Mrs Sussan
 Chapman, Barrie
 Charles, C J
 Charleston, Mrs Paula
 Charman, Lin
 Chartered Institute of Journalists
 Chester Community Ratepayers Party
 Chisholm, R I L
 Chorley, Mrs Marie
 Christie, Iain
 Christie-Murray, D
 Christopher, Tony
 Church of England
 Church of Scotland
 Church, P A
 Churchill, Winston S, MP
 Clapham, Paul
 Clarke, B M N
 Cochrane, Mr A
 Collins, Mr R
 Committee for Truth and Integrity in Public Affairs
 Cornthwaite, Christine

Corson, T Martin
Couch, Mr Frederick Alan
Court-Mappin, Brian
Cox, Mr E W
Crichton, W
Croker, J
Cronin, Mr P
Culp, Ted W
Cummins, K H
Curmy, Jean
Curtis, George
Curtis, Norman S

Daily Mirror
Daily Telegraph
Dashwood, P R
Data Protection Registrar
Day, Robin A
De Royffe, Dennis
De La Bertauche, Mr M F
Dean, Mr A
Dean, Mrs Barbara J E
Deans, Esther
Dearden Mrs C E
Dehn, Conrad, QC
Denning, Lord
Dennis, Miss E
Dennis, Mrs Patricia A
Dewsbury, E
Dickinson, J D
Dickson, Ken, Yve and Charles
Dixon, G
Dixon, Mrs K Pamela
Dobing, Mrs W M
Doe, Arthur H
Donovan, Ms R
Douglas, Mrs
Douglas, Mr and Mrs T
Douglas-Jones, Jeremy
Dowding, Mrs Olive
Downing, Charles
Draper, Sally
Draper, Dr Peter
Duffen, Mrs B P
Dundee District Council
Dunmore, Janice

Eady, David, QC
Eastern Counties Newspapers Ltd
Economic League
Eden, John
Elliman, Mr and Mrs
Elliot, Stephen J
Elliott, Christopher R
Ellison, John W
Elsworthy, Mr and Mrs M
Emerton, Anthony
England Freedom Party
Europa Times
European Regionalist Network
Evans, Shirley
Express Newspapers

Fabricant, Michael, MP
Fallon, Kevin
Farnell, Miss V
Farrell, Ms Paula J
Fell, Miss S
Fenn, Ms Jane
Field, Royle Da Costa
Financial Times
Findlay, Jeremy
Flannagan, Mr P
Flather, G, QC
Ford, Mrs E
Fowler, Fred
Francis, Flight Lieutenant G
Frazer, Ms Anne
Freedman, Valerie
Fremlin-Bailey, Albert
Fricker, Judge Nigel, QC
Frood, John
Fry, Plantagenet Somerset

Gale, Roger, MP
Galloway, J G
Gardiner, Mr D
Garthwaite, Mrs K E
Gatford, Miss A
General Council of the Bar
George, Mike A
Gibbins, E A
Gilani, Adam
Gill, Robert
Gillott, Michael
Glyde, V
Golding, Peter
Goldstaub, Anthony, QC
Goldstraw, Mrs Anna C
Graham, S
Graham, E Alan
Grant, J
Grant, John
Gray, Dr P M D
Green, Mrs Jean B
Greensted, Stephen
Griffin, J P
Griffin, Rose
Griffin, Mrs Mary
Griffiths, Mrs L E
Groves, Mr L A
Guild of British Newspaper Editors
Gunter, G W
Guy's and Lewisham Trust
Gwynn, Beatrice V

Haile, K G
Hall, S J A
Hallett, Miss M E
Handford, T H
Hardy, Miss D E
Harris, Mrs W
Harrison, David
Hart, Mrs Paula
Hartman, William L C
Haslam, Mr David L

Hassall, C W
Hawksworth, Mrs Valerie
Headland, R
Heddle, Ms Nancy
Hegarty, John
Hemingford, Lord
Henry, Mrs Joan
Henry, Renee
Herrick, George
Heseltine, Mark
Hicks, Mrs D M
Hill, Michael
Hillier, Ms Peta
Hingston-Jones, Wing Commander G F, OBE
Hirst, Mr W
Historic Houses Association
Hitchcott, Roland
Hoar, P F A
Hodge, Mr D R
Hollamby, David
Holland, Mrs Rosemary
Holland-Ford, Robert
Hollis, Canon G
Holmes, Jonathan
Holt, Councillor Clive
Homewood, Kelly
Hopper, Mr V L
Hopson, P W
Horan, Niall
Hubner, Mrs M M
Hughes, Carol
Hughes, Ted
Humpage, K G
Hunter, Drummond
Hunter, Mrs Glyn
Hussey, Lady Susan

Icler, J
Iddenten, Mrs M P
Independent Television Commission
International Federation of ME Associations
International Press Institute (British Executive)
Irving, Captain S
Irwin, Frederick
ITN

James, Nick
Jamieson, Lloyd
Jay, Mrs M
Jeffs, James E
Jenkins of Putney, Lord
Jenkins, Simon
Jenner, Mr S W
Jensen, Tanya
Jillian, Mrs Daphne
Jones, Anthony David
Jones, Mrs B K
Jones, Reverend Norman E
Jones, R B
Jones, V
Joule, Norman
Justice

Kassier, Heinz B
 Kaye, Ms Susan
 Keith, Penelope
 Kemp, Christina
 Kennish, Graham
 Kenyon, Elizabeth
 Kerr, A P
 Kerr, J Wilson
 Kevan, Tim
 Kimm, Captain Peter
 King, Lance
 King, W W
 Kingsford, John R
 Kirker, Reverend Richard
 Kitt, Mrs Dorothy
 Knapman, Paul A
 Knott, John
 Knutter, Helen
 Land, R F
 Lascelles-Hadwen, Francis
 Last, Professor John, CBE
 Law Society
 Lawrence, Arthur N
 Leapman, Michael
 Lear, Lieutenant Colonel D J
 Learman, H
 Leavey, J A
 Lee, Mr D C and Ms C M
 Levy
 Lewis, Mrs E J
 Lewisham Council
 Liberal Democrats
 (Robert Maclennan, Lord Thomson, Lord Bonham-Carter)
 Liberty (National Council for Civil Liberties)
 Liljemack-Pocklington, V V
 Ling, Mrs Marion
 Lloyd, Mrs Pauline
 Lloyd, Dr R A
 Lloyds Bank plc
 Lockyer, Dr J C G
 Lohmann, Sarah
 Lole, Alan
 Lomas, Mr C O
 London Film and Video Development Agency
 London Monday Group for Homosexual Equality
 Longhurst, Joy
 Lord, G R
 Lord, Mrs M E
 Lovelace, Denis
 Lowe, Mr A H
 Lownes, Victor
 Lowry, Mrs T
 Lutu, Mataisai
 McBride, Miss Helen
 McCann, P
 Macdonald, Mrs June
 MacKenzie, Kelvin
 McGhee, Ms L
 McGuinness, Philip
 McKellar, Peter
 McLean, Colin
 McLoughlin, Patrick

McSwiney, Mrs J
Maciocia, Giovanni
Mackenzie, Mrs J E
Madsen, P
Mansel, Dr Philip
Markesinis, Professor B S
Marsden, H
Marsden, Mrs J M
Marsh, E A
Marshall, Isabella C
Marshall, Michael
Martin, M E
Martin-Doyle, Mrs Jane
Massey, Joseph
Matthew Trust, The
Matthews, G S
Mead, Roper
Meads, Jack
Melkeyll, Reverend M G
Mellor, The Rt Hon David, QC MP
Mellor, Councillor John P
Middlebrook, Mrs M
Miller, Mrs
Miller, Mrs Jennifer
Millichamp, R I
Milne-Home, Miss B M
Mitchell, Philip J
Mitchell, R
Moffat, Dr J
Moody, Richard
Moody, Mr and Mrs
Moore, Dr G F
Moore, Miss Sandra
Morgan, G
Mornou, Ms J
Morris, Brother Martin
Morse, Tony
Mountford, G A
Mowbray, Dr A R
Munyas, Nicholas
Myers, Mr A K

National Council of Women of Great Britain
National Union of Journalists Edinburgh & District Branch
National Union of Journalists
Naturist Foundation, The
Neill, Reverend William G
Neville, R
Newman, Dr Geoffrey
News of the World
News International
Newspaper Society, The
Nias, Professor A H W
Nicholson, J E
Nield, Mrs Shirley
North West Surrey Conservative Association
Northcote, Edward J
Norwood, R J
Ntumba, Kasata

Observer
O'Dougherty, M
O'Driscoll, Reverend Peter J

Official Solicitor to the Supreme Court

Oliver, R
O'Regan, Michael L
Orme, Edward
Otton, Mrs Beryl M

Packe, Mr W J
Paisley, Janine
Palfreyman, Mrs J
Palmer, Jack
Palmer, S
Palmer-Cook, Charles C
Paris, Clyde W
Parker, S B
Paterson, Michael Orr
Pearson, I L
Pembroke, Eileen
People Newspaper
Pepper, Alasdair
Periodical Publishers Association
Peters, Don
Pettigrew, Mr E
Pickering, Barbara
Pike, Andrew
Pither, Ms Judith
Pitts, Mrs C
Potter, J B
Powell JP, Mrs Irene G
Power, Peter
Power, Councillor John
Press Complaints Commission
Press Council (five former members)
Press Standards Board of Finance Ltd
Preston, J C
Preston-Littlewood, B W
Price, Jimmy
Protection of Privacy Group
Prowse, Miss H A
Purvis, Mrs Ludmilla

Racher, Miss F
Radford, Professor Eric
Reddell, J
Redfern, Victor
Regan, Charles
Richardson, John
Richmond, John
Rigby, Isabella
Robb, William M
Roberts, Barrie M A
Robieson, Mr Sinclair N
Robinson, A J
Robson, Mrs M
Rogaly, Joe
Rogers, G
Rogers, Group Captain Pearson
Rowan, Mr W
Rowlands, Mary E
Rubinstein, John
Rubinstein, Michael
Rudge, Anthony
Ruston, Rod
Ryton, Royce

St Quinton, Stephen
Salmon, T Graham
Samuels, Alec, JP
Sanderson, Terry
Sanderson, W
Sandwell Health Authority
Saunders, John
Scargill, Arthur
Scott, Dr A D
Scott, Miss J
Scott, John
Scott, Mr R
Scott, R O
Scottish Daily Newspaper Society
Scottish Newspaper Publishers' Association
Scottish Trades Union Council
Seaman , Peter A
Shannon, Mr E W
Shaw, Arthur
Shawcross, Lord, GBE QC
Shepherd, D
Sherrill, Mrs Freda
Short, S G
Silvester, Ian
Simmons, David
Simms, Ms Madeleine
Sims, David R E
Sinclair, M
Sinclair, Miss Nicola
Sivasubramaniam, S
Skerrett, N P
Smart, Ernest
Smith, Clifford
Smith, Ms Emma E
Smith, Gordon M L
Smith, M
Smith, Michael V F
Smith, Peter A
Society of Labour Lawyers
Soley, Clive, MP
South Manchester Community Health Council
Sozzani, Mrs Michele
Spalding, John G
Spalling, Brian
Spanswick, E H
Spellman, Mr and Mrs J
Spencer, C
Spencer, G A
Spencer, J R
Spender, Sir Stephen, CBE
Spiby, J H
Spinks, Mrs M
Stagg, Reverend C R
Steadman, Nick
Stephens, Mark
Stickley, Mrs M G
Stockport Health Authority
Stockwell, Ms H
Stonewall
Storey, Sir Richard
Street, Elizabeth
Stuart, A C D

Stubbs, Sidney and Molly
Sun, The
Sunday Mirror
Suraana, Dilip
Susman, Mr P C
Sutcliffe, Tom
Sutherland, W
Sutterby, Janet B
Symonds, J D

Tanna, A
Tarrant, M
Taylor, G R
Taylor, R J
Taylor, Tony
Thames Television
Thompsom, Mrs S I
Thomson, Francis P
Thorne, M B
Thorns, Reverend Father Kenneth
Thornton, H
Threlfall, Margaret A
Thurman, Dr John
Timson, Rodney
Tipple, Dr R W
Towers, Mrs Joyce
Trades Union Congress
Trayher, Mrs Julia
Tripp, Eric
Tross, Miss M
Truder, Mr and Mrs A
Tucker, Warren
Tudor-Pole, David
Turner, J
Turner, James
Turner-Sterling, M
Tyler, R N

UK Press Gazette

Vaughan, Denis
Verney, Major Peter
Vicars, Reverend David
Victim Support

Walker, J
Walker, Mr M
Walker, William O
Wallace, Mr A F
Waller, Richard
Wallington, D A
Walter, Miss E M
Walter, R
Wardale, Roy
Wardley D
Watson, J B, OBE
Watson, Mrs Liz
Watt, Mr M
Webb, Mr J A
Webb, R S
Weir, Douglas
Weiss, Mrs Shirley
Weissman, Robert
Wells, P

West, J K
Weston, Mr and Mrs C
Wheeler, Mr and Mrs G
Wheeler, Mrs June
Whitaker, F B
White, Miss A
Wigg, Mrs Rosemary
Wilcox, M A
Wilks, Mrs A
Williams, Reverend Barrie
Williams, Mrs Beryl
Williams, Eric N
Williams, Rowland
Wilson, Mrs Barbara
Wilson, David
Wilson, Patricia
Wilson, Mr S
Winser, Alan R
Winterton, Mrs Anne, MP
Winterton, Nicholas R, MP
Wistful, C
Wollaston, Ken
Wood, K Porteus
Woodhatch, Mrs Eva
Woodrow, John
Woodward, R
Wright, Chris
Wyatt of Weeford, Lord
Wyndham, Dr Richard

Appendix B

The Recommendations of the Privacy Committee Summary of recommendations

Physical intrusion

- 1 The following acts should be criminal offences in England and Wales:
 - (a) entering private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication;
 - (b) placing a surveillance device on private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; and
 - (c) taking a photograph, or recording the voice, of an individual who is on private property, without his consent, with a view to its publication and with intent that the individual shall be identifiable.
- 2 It should be a defence to any of these proposed offences that the act was done:
 - (a) for the purpose of preventing, detecting or exposing the commission of any crime, or other seriously anti-social conduct; or
 - (b) for the protection of public health or safety; or
 - (c) under any lawful authority.
- 3 An individual having a sufficient interest should be able to apply for an injunction against the publication of any material obtained by means of any of these criminal offences or, if the material has already been published, for damages or an account of profits.
- 4 Further consideration should be given to the extent to which the law in Scotland needs to be extended to cover the proposed offences and civil remedy and how this might best be done.

Legal restrictions on press reporting

- 5 Consideration should be given to amending the legislation on the non-identification of minors in England and Wales to eliminate any inconsistencies or uncertainties.
- 6 The statutory prohibition on identifying rape victims in England and Wales should be extended to cover the victims of the sexual assault.
- 7 In any criminal proceedings in England and Wales, the court should have the power to make an order prohibiting the publication of the name and address of any person against whom the offence is alleged to have been committed, or of any other matters likely to lead to his or her identification. This should only be exercised if the court believes that it is necessary to protect the mental or physical health, personal security or security of the home of the victim.
- 8 After consulting the press and the broadcasting authorities, the Press Complaints Commission (see 11 below) should issue early guidance on jigsaw identification.

Right of reply

- 9 A statutory right of reply should not be introduced.

Tort of infringement of privacy

10 A tort of infringement of privacy should not presently be introduced.

Press Complaints Commission

11 The press should be given one final chance to prove that voluntary self-regulation can be made to work.

12 The Press Council should be disbanded and replaced by a Press Complaints Commission.

13 The Press Complaints Commission should concentrate on providing an effective means of redress for complaints against the press.

14 The Press Complaints Commission should be given specific duties to consider complaints both of unjust or unfair treatment by newspapers or periodicals and of unwarranted infringements of privacy through published material or in connection with the obtaining of such material.

15 The Press Complaints Commission should publish, monitor and implement a comprehensive code of practice for the guidance of both the press and the public.

16 The Press Complaints Commission should operate a hot line for complainants on a 24-hour basis.

17 Press Complaints Commission adjudications should, in certain cases, include a recommendation that an apology be given to the complainant. The precise form of the apology, including whether it should be given publicly or privately, could also be prescribed. Where a complaint concerns a newspaper's refusal to give an opportunity to reply to an attack made on a complainant or to correct an inaccuracy, the Press Complaints Commission should be able to recommend the nature and form of reply or correction including, in appropriate cases, where in the paper it should be published.

18 The Press Complaints Commission should have an independent chairman and no more than 12 members, with smaller sub-committees adjudicating on complaints under delegated powers.

19 Appointments to the Press Complaints Commission should be made by an Appointments Commission with explicit freedom to appoint whoever it considers best qualified. The Appointments Commission itself should be independently appointed, possibly by the Lord Chancellor.

20 The Press Complaints Commission should have clear conciliation and adjudication procedures designed to ensure that complaints are handled with the minimum of delay. Whenever practical it should first seek conciliation. There should also be a fast track procedure for the correction of significant factual errors. The Commission should also have a specific responsibility and procedure for initiating inquiries whenever it thinks it necessary.

21 Complaints committees should have delegated power to release adjudications, subject to a right of appeal for either party to the full Press Complaints Commission before publication.

22 The Press Complaints Commission should not operate a waiver of legal rights.

23 If the industry wishes to maintain a system of non-statutory self-regulation, it must demonstrate its commitment, in particular by providing the necessary money for setting up and maintaining the Press Complaints Commission.

Statutory complaints procedures

24 If the press fails to demonstrate that non-statutory self-regulation can be made to work effectively, a statutory system for handling complaints should be introduced.

25 If maverick publications persistently decline to respect the authority of the Press Complaints Commission, the Commission should be placed on a statutory footing. It should be given sufficient statutory powers to enable it to require any newspaper, periodical or magazine to respond to its inquiries about complaints and to publish its adjudications as directed. It should be able to recommend the payment of compensation.

26 The Government should set the budget for any statutory Press Complaints Commission and provide the money which it should then reclaim from the industry. The industry should set up a funding body which would apportion the cost between, and collect the money from, various industry bodies or individual publications.

Press Complaints Tribunal

27 Should the press fail to set up and support the Press Complaints Commission, or should it at any time become clear that the reformed non-statutory mechanism is failing to perform adequately, this should be replaced by a statutory tribunal with statutory powers and implementing a statutory code of practice.

28 There should be two separate triggers for the replacement of the Press Complaints Commission by a Press Complaints Tribunal.

29 A Press Complaints Tribunal should perform two distinct functions. First, it should attempt conciliation and investigate complaints. Secondly, where necessary, it should resolve disputes by ruling whether there had been a breach of the code of practice. This should be reflected in its structure and procedures.

30 The Press Complaints Tribunal should be able to award compensation. Unless the complainant can show financial loss, the amount of compensation should be limited by statute. This limit should be periodically reviewed.

31 In privacy cases, the Press Complaints Tribunal should be able to restrain publication of material in breach of the code of practice by means of injunctions. No injunctions should be granted if the publisher could show that he had a good arguable defence.

32 The Tribunal chairman should be a judge or a senior lawyer appointed by the Lord Chancellor. He should sit with two assessors drawn from a panel appointed by the Home Secretary.

Appendix C

Codes of Practice

THE PRIVACY COMMITTEE'S PROPOSED CODE OF PRACTICE

PRESS INDUSTRY'S CODE OF PRACTICE

Introduction

All members of the press have a duty to maintain the highest professional and ethical standards. In doing so, they should have regard, in particular, to the provisions of this code of practice. Editors are responsible for the actions of those employed by their publications. They should also satisfy themselves as far as possible that material accepted from non-staff members was obtained in accordance with this code.

All members of the Press have a duty to maintain the highest professional and ethical standards. In doing so, they should have regard to the provisions of this code of practice and to safeguarding the public's right to know.

Editors are responsible for the actions of journalists employed by their publications. They should also satisfy themselves as far as possible that material accepted from non-staff members was obtained in accordance with this code.

While recognising that this involves a substantial element of self-restraint by editors and journalists, it is designed to be acceptable in the context of a system of self-regulation. The code applies in the spirit as well as in the letter.

Any publication which is criticised by the PCC under one of the following clauses is duty bound to print the full adjudication which follows in full and with due prominence.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

1 Accuracy

(i) Newspapers and periodicals should take care not to publish inaccurate, misleading or distorted material.

(ii) Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due prominence.

(iii) An apology should be published whenever appropriate.

(iv) A newspaper or periodical should always report fairly and accurately the outcome of an action for defamation to which it has been a party.

2 Right of Reply

Individuals or organisations should be given proportionate and reasonable opportunity to reply to criticisms or alleged inaccuracies which are published about them.

3 Comment, Conjecture and Fact

Newspapers should distinguish clearly between comment, conjecture and fact.

PRESS INDUSTRY'S CODE OF
PRACTICE

1 Accuracy

(i) Newspapers and periodicals should take care not to publish inaccurate, misleading or distorted material.

(ii) Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due prominence.

(iii) An apology should be published whenever appropriate.

(iv) A newspaper or periodical should always report fairly and accurately the outcome of an action for defamation to which it has been a party.

2 Opportunity to reply

A fair opportunity for reply to inaccuracies should be given to individuals or organisations when reasonably called for.

3 Comment, Conjecture and Fact

Newspapers, while free to be partisan, should distinguish clearly between comment, conjecture and fact.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

4 Privacy

(i) Making enquiries about the personal lives of individuals without their consent is not generally acceptable.

(ii) Publishing material about the personal of individuals without their consent is not generally acceptable.

(iii) An intrusion into an individual's personal life can be justified only for the purpose of detecting or exposing crime or seriously anti-social conduct, protecting public health or safety, or preventing the public being misled by some public statement or action of that individual.

(iv) An individual's personal life includes matters of health, home, personal relationships, correspondence and documents but does not include his trade or business.

5 Hospitals

(i) Journalists or photographers making enquiries at hospitals or similar institutions should identify themselves to a responsible official and obtain permission before entering.

(ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospital or similar institutions.

PRESS INDUSTRY'S CODE OF
PRACTICE

4 Privacy

Intrusions and enquiries into an individual's private life without his or her consent are not generally acceptable and publication can only be justified when in the public interest. This would include:

(i) Detecting or exposing crime or serious misdemeanour.

(ii) Detecting or exposing seriously anti-social conduct.

(iii) Protecting public health and safety.

(iv) Preventing the public from being misled by some statement or action of that individual.

5 Hospitals

(i) Journalists or photographers making enquiries at hospitals or similar institutions should identify themselves to a responsible official and obtain permission before entering non-public areas.

(ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospital or similar institutions.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

6 Misrepresentation

(i) Journalists should not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge.

(ii) Documents or photographs should be removed only with the express consent of the owner and only with an indication that they might be published.

(iii) Subterfuge (including the use of concealed cameras or recording devices) can be justified only for the purpose of detecting or exposing crime or seriously anti-social conduct, protecting public health or safety, or preventing the public being misled by some public statement or action an individual and which could not be obtained by other means.

PRESS INDUSTRY'S CODE OF
PRACTICE

6 Misrepresentation

(i) Journalists should not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge.

(ii) Unless in the public interest, documents or photographs should be removed only with the express consent of the owner.

(iii) Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means.

In all these clauses the public interest includes:

- (a) Detecting or exposing crime or serious misdemeanour.
- (b) Detecting or exposing anti-social conduct.
- (c) Protecting public health or safety.
- (d) Preventing the public being misled by some statement or action of an individual or organisation.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

7 Harrassment

(i) Journalists should neither obtain nor seek to obtain information or pictures through intimidation, harassment or trespass.

(ii) They should not persist in telephoning or questioning individuals after having been asked to desist and should not remain on their property after having been asked to leave.

(iii) They should not follow individuals unless this is necessary for the purpose of detecting or exposing crime or seriously anti-social conduct, protecting public health or safety, or preventing the public from being misled by some public statement or action of an individual.

(iv) They should not photograph individuals on private property without their consent unless it is necessary for one of these purposes.

PRESS INDUSTRY'S CODE OF
PRACTICE

7 Harassment

(i) Journalists should neither obtain information nor pictures through intimidation or harassment.

(ii) Unless their enquiries are in the public interest, journalists should not photograph individuals on private property without their consent; should not persist in telephoning or questioning individuals after having been asked to desist; should not remain on their property after having been asked to leave and should not follow them.

The public interest would include:

- (a) Detecting or exposing crime or serious misdemeanour.
- (b) Detecting or exposing anti-social conduct.
- (c) Protecting public health and safety.
- (d) Preventing the public from being misled by some statement or action of that individual or organisation.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

8 Payment for Articles

(i) Payments or offers of payments for stories, pictures or information should not be made to witnesses or potential witnesses in current criminal proceedings or to people engaged in crime or to their associates.

(ii) 'Associates' includes family, friends, neighbours and colleagues.

(iii) Payments should not be made either directly or indirectly through agents.

(iv) Editors should not publish such material if there is reason to believe payment has been made for it.

(v) Payment may exceptionally be justified if information cannot be obtained by any other means for the purpose of detecting or exposing crime or seriously anti-social conduct, protecting public health or safety, or preventing the public from being misled by some public statement or action of an individual.

PRESS INDUSTRY'S CODE OF
PRACTICE

8 Payment for articles

(i) Payments or offers of payment for stories, pictures or information should not be made to witnesses or potential witnesses in current criminal proceedings or to people engaged in crime or to their associates except where the material concerned ought to be published in the public interest and the payment is necessary for this to be done.

The public interest will include:

(a) Detecting or exposing crime or serious misdemeanour.

(b) Detecting or exposing anti-social conduct.

(c) Protecting public health and safety.

(d) Preventing the public from being misled by some statement or action of that individual or organisation.

(ii) "Associates" include family, friends, neighbours and colleagues.

(iii) Payments should not be made either directly or indirectly through agents.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

9 Intrusion into Grief or Shock

(i) The press should not intrude into personal grief or shock, in particular in the aftermath of accidents and tragedies.

(ii) Unsolicited approaches to the recently-bereaved can be justified only to obtain material which cannot be obtained by other means for the purpose of exposing crime or seriously anti-social conduct, protecting public health and safety, or preventing the public from being seriously misled by some public statement or action of an individual.

(iii) In these instances, enquiries should be carried out and approaches made with sympathy and discretion.

(iv) The press should take care not to publish pictures which are likely to exacerbate grief or cause distress.

10 Innocent Relatives and Friends

The press should not identify relatives or friends of persons convicted or accused of crime unless the reference to them is necessary for the fair and accurate reporting of the crime or legal proceedings.

11 Interviewing or Photographing Children

(i) Journalists should not normally interview or photograph a child under the age of 16 in the absence, or without the consent, of a parent or other adult who is responsible for the child.

(ii) Children should not be approached or photographed while at school without the permission of the school authorities.

PRESS INDUSTRY'S CODE OF
PRACTICE

9 Intrusion into Grief or Shock

In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion.

10 Innocent Relatives and Friends

Unless it is contrary to the public's right to know, the press should generally avoid identifying relatives or friends of persons convicted or accused of crime.

11 Interviewing or Photographing Children

(i) Journalists should not normally interview or photograph children under the age of 16 on subjects involving the personal welfare of the child, in the absence of or without the consent of a parent or other adult who is responsible for the children.

(ii) Children should not be approached or photographed while at school without the permission of the school authorities.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

12 Children in Sex Cases

The press should not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims, or as witnesses or defendants.

13 Victims of Crime

(i) The press should not, even where the law does not prohibit it, identify victims of sexual assaults or publish material likely to contribute to such identification.

(ii) The press should not identify victims of any crime when identification is likely to put at risk the physical or mental health or security of the victim or that of his home.

14 Criminal Convictions

Even where the law does not prohibit it, an individual's criminal convictions should not be published unless the reference to them is directly relevant to the matter reported.

15 Discrimination

(i) The press should avoid prejudicial or pejorative references to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or handicap.

(ii) It should not publish details of a person's race, colour, religion, sex or sexual orientation, unless these are directly relevant to the story.

16 Stories about the Recently-dead

Newspapers should apply the same principles of accuracy, respect for privacy and non-discrimination to stories about the recently-dead as to stories about living.

PRESS INDUSTRY'S CODE OF
PRACTICE

12 Children in Sex Cases

The press should not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims, or as witnesses or defendants.

13 Victims of Crime

The press should not identify victims of sexual assault or publish material likely to contribute to such identification unless, by law, they are free to do so.

14 Discrimination

(i) The press should avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or handicap.

(ii) It should avoid publishing details of a person's race, colour, religion, sex or sexual orientation, unless these are directly relevant to the story.

THE PRIVACY COMMITTEE'S
PROPOSED CODE OF
PRACTICE

17 Financial Journalism

(i) Even where the law does not prohibit it, journalists should not use for their own profit financial information they receive in advance of its general publication nor should they pass such information to others.

(ii) They should not write about shares or securities in whose performance they know that they or their close families have a significant financial interest, without disclosing the interest to the editor or financial editor.

(iii) They should not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

18 Confidential Sources

Journalists have a moral obligation to protect confidential sources of information.

PRESS INDUSTRY'S CODE OF
PRACTICE

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Journalists have a moral obligation to protect confidential sources of information.

Appendix D

Draft Clauses

1- (1) Subject to subsection (3), a person is guilty of an offence if in England and Wales he does any of the acts specified in subsection (2).

Prohibited methods of seeking information for publication

(2) Those acts are—

(a) entering or remaining on private property, without the consent of the lawful occupant, with intent to obtain personal information with a view to its publication; or

(b) with that intent—

(i) placing a surveillance device on private property without the consent of the lawful occupant; or

(ii) using such a device (whether on private property or elsewhere) in relation to an individual who is on private property without the consent of the individual to such use; or

(c) taking a photograph, or recording the voice, of an individual who is on private property, without his consent to the said taking or recording, with a view to its publication and with intent that the individual shall be identifiable.

(3) A person is not guilty of an offence under this section if he shows that the act in question was done—

(a) for the purpose of preventing, detecting or exposing a crime, or other seriously anti-social conduct; or

(b) for the purpose of preventing the public from being misled by some public statement or action of the individual concerned; or

(c) for the purpose of informing the public about matters directly affecting the discharge of any public function of the individual concerned; or

(d) for the protection of public health or safety; or

(e) under any lawful authority.

(4) The High Court may, on the application of the individual concerned, grant an injunction restraining the publication of any information, photograph or recording obtained by means of any act which constitutes an offence under this section; and the individual to whom it relates shall have a right of action against any person who publishes it for any loss suffered by that individual, and for an account of any profits accruing to that person, as a result of the publication.

(5) Subsection (4) applies also to any information, photograph or recording obtained outside England and Wales if it was obtained with a view to publication in England and Wales and by an act which would have constituted an offence under this section if done there.

(6) In this section—

“lawful occupant”, in relation to private property, means any person entitled to authorise access to it;

“personal information”, in relation to an individual, means information about his private life, including information relating to his home, family, religion, health or sexuality, or to his legal or financial affairs;

“private property” means any private residence, together with its curtilage (including garden and outbuildings), a hotel bedroom, any part of a hospital or nursing home where patients are treated or accommodated and any school premises;

“publication” means publication to the public at large or any section of the public in a newspaper or periodical, by broadcasting or, for commercial purposes, by any other means.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) A prosecution under this section shall be brought only with the consent of the Director of Public Prosecutions.

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