

Code of Practice

PRESS COMPLAINTS COMMISSION

From the Chairman

25 September 2007

Rt. Hon. Lord Holme of Cheltenham  
Chairman  
Select Committee on the Constitution  
House of Lords  
London  
SW1A 0PW

Dear Richard,

Thank you for sending me a copy of your report on *Relations between the executive, the judiciary and Parliament*.

I have had a look at the report, and also transcripts of some of the oral evidence. You actually covered some matters that have been the subject of private discussions between the PCC, the press and the judiciary. I think that the current Code of Practice, with its rules on accuracy and opportunity to reply, should already provide a way in for those wishing to hold to account the sort of newspaper reporting you are concerned about.

That said, I will of course feed your concerns in to the Editors' Code of Practice committee, which writes and reviews the Code.

With kind regards.

Yours ever,  
Christopher Meyer

Sir Christopher Meyer

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## CHAPTER 4: JUDICIARY, MEDIA AND PUBLIC

### Introduction

140. It is essential that the judiciary should engage effectively with the public in order to maintain confidence in judges and the parts of the justice system for which they are responsible. Before considering how this can best be done, it is sensible to assess how the judiciary are currently perceived by the public.

### Public Perceptions

141. Unfortunately, as Professor Dame Hazel Genn explained, there is “little information ... about attitudes to the judiciary in England and Wales” because “there has been no sustained tradition of investment in research” (Q 308). However, on the basis of what limited information there is, she told us that “the public believe or know that the judiciary are not corrupt, that they do not tell lies, that they are independent, the public trusts them to apply the law impartially”. And whilst the public also believe that judges are somewhat out-of-touch, Dame Hazel rightly pointed out that “the fact that people say, ‘I think they seem a bit out-of-touch, I am not sure that they really know what goes on in the real world’ is not inconsistent with saying ‘I trust them’ and I think they do trust them and what we see from ... polls is that by comparison with other institutions they trust the judiciary very much” (Q 306). Moreover, the advent of the Judicial Appointments Commission, bringing greater transparency to the selection of judges and attempting to encourage applicants “from the widest range of backgrounds”, should help to increase public confidence in the judiciary still further (Q 327).
142. However, whilst public confidence in judges appears generally to be holding up, attitudes may be shifting. A panel of legal journalists told us that judges are increasingly seen as “too left-wing, too bleeding liberal, too wet” and “too pro-human rights and too soft”. They also pointed to a perception that “the Government tries to get tough and do things to help the public and the judges sabotage it” (Q 95). Frances Gibb, Legal Editor of *The Times*, added that people are more willing to speak out nowadays because “it is not off limits to attack anyone in authority in the way it might have been 30 years ago” (Q 100).
143. Similarly, Paul Dacre, editor of the *Daily Mail*, felt that whilst “the public still have huge faith in the independence and integrity and incorruptibility of the British judiciary”, they are becoming “slightly confused” because they see “political judgments being made by judges which fly in the face of what they perceive as national interests” and “an increasingly lenient judiciary, handing down lesser and lesser sentences”. In his view, the public “still have great faith in the judiciary but there are worries that it is not reflecting their values and their instincts” (Q 335). To support these claims, Mr Dacre commissioned an ICM poll in advance of his appearance which found that, of the more than 1,000 members of the public questioned, only 18 per cent had faith that the sentences they wanted passed against criminals would be reflected by the courts whilst 75 per cent felt that sentences were too lenient (Q 353).
144. In some cases, public attitudes towards the judiciary—whether positive or negative—can stem from ignorance of how the justice system works. As

Dame Hazel said, "people are [not] taught properly about the justice system, about the judiciary and about the difference between civil and criminal courts at school, it is not something that we are brought up on". As a result, "people grow up in relative ignorance about what the justice system is there for and what it does". Whilst some people will have first hand experience of the justice system, most people draw their knowledge of the judiciary and their opinions from the media, and "the danger with that is, of course, that the reporting in the media and representations on the television are very selective, they are rather haphazard" (Q 308). Indeed, media coverage of the judiciary tends to focus on controversial or damaging stories and cases, because "a story about a judge behaving with outstanding levels of professionalism in court is not going to make news in the same way as a doctor performing an operation absolutely beautifully does not make news" (Q 309).

145. Given their important role in shaping attitudes towards the judiciary and the justice system, the media have a duty to report proceedings accurately and fairly. However, certain sections of the media might be said to abuse this position of responsibility by attacking individual judges or the judiciary as a whole for carrying out their obligations by implementing the HRA or following sentencing guidelines. For example, the High Court ruled in May 2006 that the nine Afghan nationals who had hijacked an aeroplane should have discretionary leave to remain in the United Kingdom under the HRA. The following day, the *Daily Express* printed a leader in the following terms: "Using the European Convention on Human Rights as cover, Mr Justice Sullivan made a ruling which many will regard as tantamount to a judicial coup against Parliament ... Britain's out-of-touch judges are increasingly using the Human Rights Act as a means of asserting their will over our elected representatives".<sup>74</sup> Similarly, a *Daily Mail* editorial in 2003 asserted that "Britain's unaccountable and unelected judges are openly, and with increasing arrogance and perversity, usurping the role of Parliament, setting the wishes of the people at nought and pursuing a liberal, politically correct agenda of their own, in their zeal to interpret European legislation".<sup>75</sup> This kind of rhetoric is misleading and wholly inappropriate, showing no regard for the consequences. As Lord Falconer has said, it has "an impact in undermining confidence in the judiciary".<sup>76</sup>
146. **We believe that the media, especially the popular tabloid press, all too often indulge in distorted and irresponsible coverage of the judiciary, treating judges as "fair game". A responsible press should show greater restraint and desist from blaming judges for their interpretation of legislation which has been promulgated by politicians. If the media object to a judgment or sentencing decision, we suggest they focus their efforts on persuading the Government to rectify the legal and policy framework. In order to ensure more responsible reporting, we recommend that the Editors' Code of Practice, which is enforced by the Press Complaints Commission, be regularly updated to reflect these principles.**

<sup>74</sup> Leader, 11 May 2006.

<sup>75</sup> Comment, 20 February 2003.

<sup>76</sup> Evidence by the Rt. Hon. Lord Falconer of Thoroton and Mr Alex Allan to the Constitutional Affairs Select Committee, 4 July 2006, Q 250.

147. Furthermore, as discussed in Chapter 2, Ministers can on occasion worsen the situation by making inappropriate comments about judges or their judgments, even though the judges are striving to follow sentencing guidelines and to apply Government legislation. This kind of behaviour by any minister is unacceptable. In addition, Frances Gibb of *The Times* told us that ministers are all too often “peddling the wrong image” of the HRA (Q 116), a view which echoes the finding of the Joint Committee on Human Rights that ministers are making “unfounded assertions about the Act” and using the Act as “a scapegoat for administrative failings in their departments”.<sup>77</sup> This can increase the public pressure on judges charged with interpreting an Act which was introduced by this Government, with the result that, in the words of Paul Dacre, “the perception is that it is the judges’ fault” (Q 358).
148. It will be clear that we believe it is incumbent on the media as well as politicians to exercise restraint when commenting on judges or their judgments. However, this is not to say that the judiciary, particularly with their greater independence from the executive, can merely stand aloof, refusing to engage with the media and the public outside the courtroom. With this in mind, we were disappointed at the reaction of Sir Igor Judge, President of the Queen’s Bench Division, who told us that he was “very troubled” about the Judicial Communication Office’s (JCO) ambition to enhance public confidence in judicial officeholders, explaining that:
- “enhancing public confidence is a most difficult concept and it is particularly difficult ... for judges who actually are not in the business of trying to sell themselves to anyone. If our judgments do not speak for themselves there is nothing that the Communications Office or the press office can do” (Q 235).
149. Whilst Sir Igor is of course correct that the words of the judge in the courtroom are by far the most important way in which the judiciary interact with the public and the media, Joshua Rozenberg of *The Daily Telegraph* commented that “the judges have to work for [respect]. I do not think they can assume, as perhaps they used to, that it comes automatically with the role and with the knighthood. That is why public relations is so important and that is why perhaps it is in the judges’ interests for them to be doing more in order to retain—and even regain—the public’s confidence” (Q 101). We have sympathy with this view. The key question is that posed by Lord Falconer: “how do [the judiciary] connect with, and retain the confidence of the public, without forfeiting either their independence or their very role in deciding cases in accordance with the facts before them?”<sup>78</sup>

### The Role of Individual Judges

150. We now consider the ways in which the judiciary can, do and should communicate with the public and the media. First, to take individual judges and their judgments, the Lord Chief Justice warned us that “it ought to be clear from the judgments in question the process of reasons that has led the judge or judges to reach their conclusions ... and it would not be appropriate for those who have given the judgment or, indeed, for me to go beyond that”

<sup>77</sup> Thirty-second Report of Session 2005–06, *The Human Rights Act: the DCA and Home Office Reviews* (HL Paper 278/HC 1716), p 3.

<sup>78</sup> See <http://www.dca.gov.uk/speeches/2006/sp060913.htm>.