

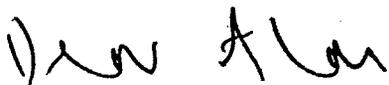
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Press Complaints Commission

PRIVATE AND CONFIDENTIAL

From the Director

21 February 2005

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Editor
The Guardian
119 Farringdon Road
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PCC INVESTIGATIONS

I promised I would write to you further about some of the issues you raised in relation to the above. I very much welcome a constructive dialogue with editors and others about the work which the PCC should be doing, and I am grateful that we can have this considered debate.

You have taken the position that the PCC should be investigating allegations or suggestions that some editors have been employing clandestine and illegal means of getting stories, such as bugging telephones and intercepting mail or otherwise obtaining documents, such as medical records, which are confidential. I want to explain the PCC's position in relation to this.

The starting point is the constitutional position of the PCC. We are bound by the terms of our existing constitution (the Memorandum and Articles of Association), created by the PRESSBOF, and the Code laid down by the Code Committee of which you are, of course, currently a member.

When the PCC was set up as successor to the Press Council, it was entirely confined to dealing with complaints which were made to it – although it could take up complaints of its own accord in specified circumstances. This was deliberately intended to avoid the Commission becoming a talking shop or involving ourselves in fruitless fishing expeditions.

I have consulted our lawyer, Cyril Glasser, about the history of all this. Cyril has been advising the Commission since its inception. He tells me that the Commission did not find this position very satisfactory, and that for some years we and our lawyers lobbied for an extension of the remit to allow us to pronounce on issues relating to the

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Director
Tim Toulmin



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Code of Practice which we thought would be in the public interest for the Commission to discuss. This was eventually agreed. It was made clear to us at the time that this extension was intended to allow us to pronounce on general issues which came up from time to time, and was not to be used for matters which were not related to the Code of Practice. As you know, we have used this extension to make statements about a number of things through our Guidance Notes. As I explained before, the Commission will shortly be publishing a new note, agreed with the Information Commissioner, which makes clear that there is a specific criminal offence of unlawful obtaining of personal data, and that individuals can be prosecuted at the instigation of the Information Commissioner or the DPP.

There are other restraints on a capacity to act. We are generally not allowed to deal with matters which are better able to be dealt with by courts. As you will know, we interpret this provision in a very liberal fashion, especially in respect of privacy cases, but there may be some situations where it is more appropriate for the potential complainant to take court proceedings rather than come to us. Such situations may arise where subpoenas and disclosure rights are desirable, or where intense investigation is necessary. We may not be immune from defamation proceedings in some circumstances where we investigate the matter.

Another problem is the law of contempt. Where civil action has taken place to restrict matters of confidence, it is difficult to see how we can then mount an investigation of our own. This is especially true where the police are involved. Clearly, there may be many cases of this sort which are sub judice. There have been occasions in the past when we have been threatened with the possibility of contempt proceedings if we proceeded with an investigation.

Most difficult are those cases where the potential complainant does not wish to complain. It is then difficult to see, in those circumstances, how we can proceed without those concerned changing their minds or otherwise giving us the information on which we can found an investigation.

Having said all that, I should make it clear that there are situations of the type you contemplate where it is possible for us to take on an investigation. An obvious example is that involving the share tipping accusations in relation to The Mirror. We immediately conducted an investigation, ahead of the DTI Inquiry and the police investigation, and we published a strong condemnation of what had occurred.

However, for the reasons I have given above, such investigations are likely to be rare.

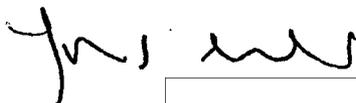
I now turn to the particular matter about which you contacted me. The information was imprecise, and it was not entirely clear which newspapers were involved. The lawyers for the potential complainant did not want us to be involved, but said they might come to us in due course. Nevertheless, following your approach, we contacted them on two occasions to see if they wanted us to take things further. Without knowing the details of the complaint, our ability to act was constrained. What is more, I believe that there was an injunction in force. In these circumstances, I would not have been able to approach the newspapers.

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I think you accepted that in this instance it was not appropriate to take the matter further at this stage. I emphasise again that we are prepared to mount an investigation in appropriate circumstances where any difficulties could be overcome. It seems to me that that the situations I have outlined above would be faced by any press tribunal, whether self regulating or statutory.

I would be happy to hear from you about any solution you seek to the problems I have outlined above and which prevent us acting in any particular case. Ultimately of course, any extension of our powers (if that is what you have in mind) would have to be taken to PRESSBOF and the Code Committee rather than the Commission, but I would be happy to continue any dialogue with you on the subject that you feel is necessary.

With kind regards.



Tim Toulmin

