



The PCC

Time for last rites?

Recent events surrounding News International and the phone hacking scandal raise questions about the future of the Press Complaints Commission. Desmond Browne QC investigates

Never can the press have shown so much interest in its own affairs as when examining where responsibility lies for the phone-hacking which took place at the now-defunct *News of the World*. Not only has this inevitably raised questions about corporate governance at News International, it has also led to the reading of the obsequies over the Press Complaints Commission ("PCC"). Typical was the contribution from the former Lord Chancellor, Jack Straw MP, in his *Gareth Williams Memorial Lecture in July*: "The PCC's failure, not least in the face of the

hacking scandal, has been abject. Its obituaries have now been pronounced, from across the political spectrum. All we await is the last rites".

A look at its recent history

Mr Straw looked back to Lord Wakeham's Chairmanship of the PCC from 1994 to 2002, and lamented that he had not been succeeded by Chairs of equal skill and standing. The PCC might then, he said, have commanded the same authority and respect as the Advertising Standards Authority. (Mr Straw did not

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mention that Lord Wakeham's period of office coincided with his non-executive directorship of Enron – the cause of his departure from the PCC in February 2002.)

One of those with reason to feel hurt at Mr Straw's remarks will have been Sir Christopher Meyer, our former Ambassador in Washington and famed as the author of *DC Confidential*. His time as PCC Chairman ended in April 2009. As he said in a valedictory interview in the *Guardian*: "I don't do suave. Ask my children". It was consistent with this persona that when asked what he thought was wrong with the PCC, Sir Christopher replied: "not a lot".

Phone hacking unfolds

It was Sir Christopher's successor, Baroness Buscombe, who had to deal with the developing scandal once the *News of the World*'s stance that the hacking by their jailed Royal Correspondent (Clive Goodman) was "aberrational, a rogue exception" began to fall apart.

In July 2009 the *Guardian* published articles on two successive days, asserting that hacking had been endemic at the *News of the World* and that police officers had found evidence of hacking into thousands of phones.

The police responded by acknowledging that the targets of Mr Goodman and the private detective he had engaged (Glenn Mulcaire) may have run into hundreds of people, but said that their inquiries had shown that the tactic had only been used against a far smaller number of individuals. Former Assistant Commissioner Andy Hayman, who had led the original police inquiry in 2006, wrote in the *Times* which had engaged him as a columnist on his retirement from the force that: "This (2006) was not the time for a half-hearted investigation – we put our best detectives on the case and left no stone unturned."

The PCC has, of course, no investigatory powers, so in the light of the position adopted by the Metropolitan Police, it can perhaps be forgiven for the conclusion reached in November 2009 that there was no new evidence to suggest that the practice of hacking was undertaken by others besides Goodman and Mulcaire. What came back to haunt the PCC was its jibe that the *Guardian*'s stories did not quite live up to their dramatic billing.

Worse still, Lady Buscombe publicly challenged the evidence given to the Commons Culture, Media and Sport Committee by a solicitor acting for hacking victims, and ended up having to pay £20,000 in libel damages.

Personal experiences

– both bad ...

My own experience of the PCC has been mixed. For obvious reasons I can only give an outline of the facts. In the first case, a claimant believing himself to have been libelled in a tabloid newspaper column and willing to settle for an apology complained to the PCC, who dismissed the complaint, holding that the article had not been defamatory. This compelled him to initiate High Court proceedings, which had not been his original intention. At trial the judge ruled that the

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article had alleged dishonesty, and the claimant received substantial damages. This was a classic example of the widespread perception that the PCC's rulings too frequently favour the press.

... and good

But another case showed the PCC in a much more favourable light. A public figure caught wind of the fact that the press had discovered a suicide attempt by a child of his. We agonised (though not for long, since the matter was so urgent) as to whether to seek an injunction. Eventually concluding that an injunction might only make matters worse and attract still greater publicity, we decided to approach the PCC. Their subsequent approach to editors had the result that to this day the tragic incident has remained private.

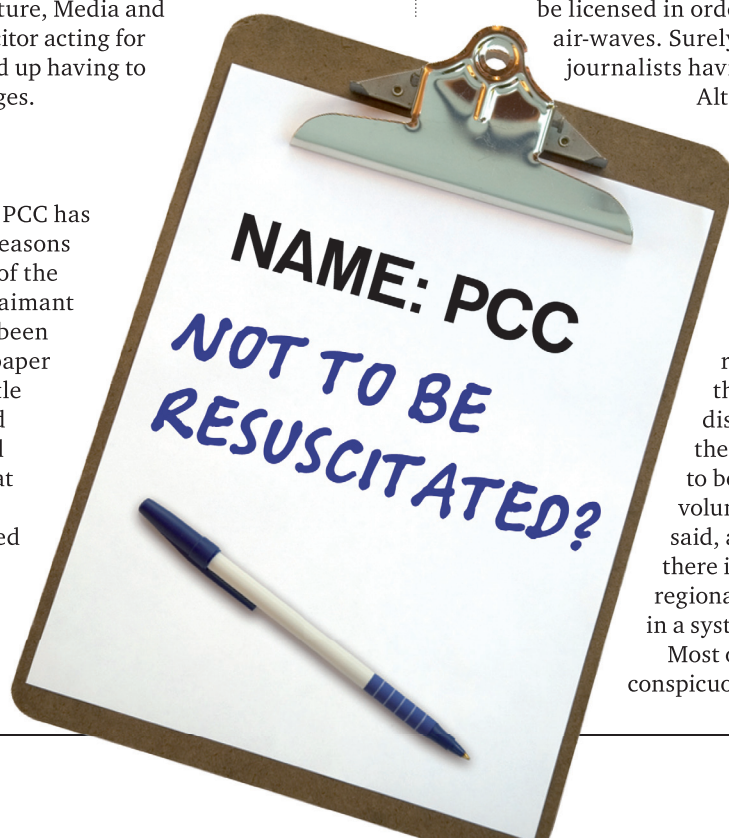
Public perception

So, not all the savage criticism of the PCC has been justified. Why then is it treated as dead? One objective observer, Tim Bratton, the general counsel for the *Financial Times*, rebutted the suggestion that it was dishonest or unethical, but said that it could not recover from the public's perception of it as ineffective and unable to regulate the media's big beasts. As Tim Bratton says, whether or not that view is fair is irrelevant.

A starting point: a statutory framework?

There are some who suggest that since Ofcom successfully regulates the broadcast media, their bailiwick should be extended to the print media. Despite the superficial analogy, this reasoning fails to persuade. Radio and television needs to be licensed in order to prevent anarchy on the air-waves. Surely few would want to see print journalists having to be licensed.

Although I may be scarred by my long immersion in first the Clementi Review, and then the passage through Parliament of the Legal Services Bill, it strikes me that there is a solution worth debating closer to home. As a starting point I agree with Jack Straw that a statutory framework is now required. It is wholly unsatisfactory that Express Newspapers have disengaged from the PCC. This is the antithesis of the responsibility to be expected in a system of wholly voluntary self-regulation. As Mr Straw said, absent a statutory framework there is no power to require all national, regional and local newspapers to take part in a system with a binding Code of Conduct. Most observers agree that it was the conspicuous failure of the system for dealing



with solicitors' complaints that drove the Clementi Review, and ironically it was the media which supported the drive against self-regulation in the professions, including our own. In Jack Straw's words, "self-regulation is self-serving". The same arguments which the press have applied to other professions apply with equal, if not greater force, to the press itself.

The Bar's experience

The Bar fought successfully to avoid direct regulation, Clementi's so-called Model A. We now have as part of the statutory framework, self-regulation by the Bar Standards Board, an integral but independent part of the Bar Council with what has turned out to be very strong lay input. Why not adopt the same approach to the press? What would be required to command public confidence?

The solution?

- Firstly, the PCC will need to be better funded and better staffed. As Michael Smyth, recently retired from Clifford Chance and a newly appointed Commissioner, recently commented, it is not difficult to see why a self-regulatory body with a workforce of fewer than 20 and a budget of less than £2 million should have been unanimously identified as a patsy.
- Next, it must be given the power to award compensation up to a fixed ceiling, say £20,000. This would provide access to justice for those otherwise likely to be deprived of their art 6 rights by the absence of legal aid, and the effective abolition of conditional fee agreements in the near future.

Little attention has been paid to the Strasbourg decision in *Peck v UK* (2003) that the absence of any power on the part of the regulators to award damages meant that they could not provide an effective remedy within art 13.

- A power to order an apology is pointless, if it is enforced and insincere. Richard Ingrams, when asked in cross-examination in the *Maxwell* libel action whether he had ever published a knowing falsity, responded: "only our apologies". The power to order the publication of a summary of the PCC's findings and to do so with proper prominence is a quite different matter. If that were available, I would not personally advocate a power to fine, and the power to prevent publication in advance should be left to the courts.
- As an aid to its investigations, the PCC should at least have the power to call for documents.

To ensure the effective operation of the new-style PCC, it will require an effective monitor. That could be Ofcom, or alternatively an Ombudsman or independent supervisory board, reporting annually to Parliament. In that way the patient's bed need not necessarily carry the notice "Not to be resuscitated", still less "RIP". ●



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