

**SPEECH TO PUBLIC SYMPOSIUM, CAN THE PRESS REGULATE ITSELF?**

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I am grateful to Colum Kenny for inviting me to address this distinguished audience. I know that this talk takes place against the backdrop of the continuing debate about how best to ensure high standards of journalism in Ireland, while at the same time preserving freedom of expression.

This is a vital debate, and I wish you luck in resolving it, for the outcome will have a significant impact on the practice and culture of journalism and on how competing rights of members of the public are balanced. It is a serious debate indeed that has the potential both to affect an entire industry and change the manner in which information is transmitted and received in a whole country.

It is a discussion that has also, I know, been informed in part by case studies of press regulation elsewhere in Europe and the world. I can bring one perspective of that – but I am not of course here to say that ours is the only way in which things should be done, or even that it is appropriate for everyone. There is no one size fits all form of press regulation. Indeed, we ourselves adapted a model that was pioneered in Scandinavia, where they first cracked the conundrum of how to balance the rights of individuals and publications to free expression on the one hand with the rights of the individual to protection from intrusion and inaccuracy on the other.

But I would say that it is notable that most countries in Europe – including those in Eastern Europe who have recently experienced statutory controls on the dissemination of information – now choose voluntary regulation.

Of course, this is best done when there are sufficient safeguards to reassure complainants and the public that it is carried out independently, but our starting point is that the press should be free to choose how it is done and not have rules imposed on it from above.

We read this week in the Irish Times that a new press council here would have a statutory basis, although compliance with it would be voluntary. Whether this can safeguard the public's right to know while delivering results for the complainant naturally remains to be seen. Press regulation here would be out of step with the rest of Europe – but you might think that that is no reason to condemn it. But there must be questions about whether the element of state involvement will alienate some of those the council seeks to regulate – and that it ends up being seen as something to work against rather than with. A measure which on paper looks robust might in fact undermine the ability to deliver results. As I shall argue, if you accept in a free society – as I think you must – that the media cannot be *told* what to believe or say, 'buy-in' from the regulated industry is crucial to the success of the regulator.

I have followed the progress of the debate here with interest for some years – since early 1999, when I first introduced myself to Mr Frank Cullen. I know that enthusiasm for self-regulation here has ebbed and flowed in those years. When it has flowed, the UK PCC has been hailed as a model of success. When it has ebbed, it has been derided as a toothless poodle.

Which is it? Clearly I am partisan, and so I will leave that for you to decide. But before you make your minds up, let me deal with some of the myths about self-regulation and also give you some facts about how it works.

The first thing to say about self-regulation is that we do ourselves no favours. I am the first to admit it. The problem is the term 'self-regulation'. It stimulates suspicion everywhere.

Critics see the 'self' – and think 'self-interest'. Journalists see the 'regulation' – and think 'interference'.

Yes, the press itself writes the rules on accuracy and privacy and so on contained in our Code of Practice. That is a vital part of freedom of expression - and we start from the position that governments and state bodies have no business in regulating the free flow of information or telling people what they may publish. Down that path inevitably lies the chilling path of state censorship of the media. But in any case, it is surely true that self-imposed rules in such an industry are more likely to carry moral authority than enforced ones.

Yes, the industry indirectly funds the body that takes complaints under the Code of Practice. But that ensures we provide a service that is free for the user, one which is light on bureaucracy and no burden to the taxpayer.

But 'self-regulation' is nonetheless inadequate to describe what we do. The problem is that we have come up with nothing better to describe it. Pure self-regulation of the press traditionally involves journalists sitting in judgement of one another, investigating complaints about one another, in a system that is financed directly by publishing companies.

What we have, by contrast, is 'self-imposed regulation', or a form of 'civil regulation'.

This is in part because of the significant public input into the system. Let me explain.

Firstly, the PCC is administered entirely independently. None of the Commission's full time staff is a journalist or has ever been employed by a newspaper. They have no conceivable vested interest in wishing to see a newspaper unfairly triumph over a complainant in a dispute, as some allege. They give independent advice to journalists and the public about what is and is not acceptable under the rules, and they investigate and resolve breaches of the Code of Practice. They successfully dispense with 98% of

complaints without the need for a formal ruling by the Commission, for instance by negotiating corrections and apologies – of which more later...

Secondly, the non-executive board of the Commission is dominated by members of the public, who make up 60% of the panel which adjudicates complaints when it has not been possible to settle complaints amicably. These people are appointed by an independent Appointments Commission following open advertising across the UK.

The rest of the board are people with senior experience within newspapers and magazines – something that encourages editors to buy into the system, and something that is vital if the Commission's rulings are to enjoy credibility within the industry. This balance has been altered over the years to the advantage of the public members of the Commission: we now think it is about right.

Thirdly, there is independent scrutiny of the PCC's procedures in the form of an audit committee and reviewer of cases.

All this means that the PCC is a far cry from the way in which our detractors sometimes characterise us – as being in the pockets of the industry, or secretive, or dominated by editors at the decision making level.

And yet in our system the industry still preserves its traditional freedoms, while giving readers confidence that the information contained in the product is subject to certain standards, and those who wish to complain a mechanism to achieve redress without the need to take any risks, spend any money or waste any time.

So how does it work, and why?

The starting point is the press Code of Practice – written by a standing committee of editors drawn from different types of publication throughout the country. The Code covers areas such as accuracy, intrusion into privacy, payments for articles and the

physical behaviour of journalists in researching stories. It acts both as a set of rules for working journalists and a charter of rights for members of the public who are clear what standards should be applied and have a clear framework to assist them in making complaints.

Put another way, the Code encourages the two 'Rs': restraint and redress.

That is *restraint* on the part of journalists and editors about what is published, and *redress* for members of the public and public figures when things go wrong, as they inevitably do.

At this point, cynics sometimes ambush me. They will pop up with some story or other that they feel has overstepped the boundaries of what should be acceptable. These are usually objections on taste grounds, rather than genuine intrusions, or criticisms of a newspaper's strong view, which we say in a free society they must be able to hold and publish. And of course from time to time things do go wrong which we can all criticise – but that does not mean that the whole system is a failure.

What I am highlighting is the invisible achievement of self-regulation: the restraint from publishing true but intrusive stories where the individual's right to privacy trumps the public's right to know. Such stories are spiked every day of the week, because of the Code and the manner in which it has been developed and interpreted by the Commission. I will come on to why the Code is respected in a minute. Usually stories do not appear because the editor him or herself has decided that publication would breach the Code: at other times it follows their taking advice from the Commission or from their legal advisers.

Such stories might include information about people's health, or conditions such as early-stage pregnancies or abortions, the criminal behaviour of relatives of well-known people, photographs of people in private places, sexual details, information contained in

private correspondence, financial information, stories about the children of public figures – the list goes on and on.

Of course there might be reasons why the public interest is genuinely served by publishing such stories. But that will vary from case to case – and it has certainly so far been beyond the wit of people to codify all circumstances in which the public interest will justify an intrusion.

But you will want to know why journalists should take any notice of a voluntary Code in the face of a juicy story. And why does the Code have authority?

It would be foolish and wrong to suggest that the Code and the Commission have always enjoyed total acceptance within the industry. The task facing my predecessors in 1991 was tough: they had to change the entire culture of an industry that was not used to any sort of regulation. They had to do this by persuading them of the merits of a voluntary Code. In the early days some editors did not respect the Commission's rulings. They saw the Commission as an unnecessary interference in their traditional freedoms, rather than a manifestation of their freedom of expression which would ensure that there was no judicial or governmental interference. There were early crises of authority, which have been well documented elsewhere.

Yet none of this should have been a surprise. It happens every time a new press council is created. It is obvious that it takes time for such bodies to grow in stature and to be respected throughout the regulated industry and beyond.

But the early difficulties gave rise to measures to strengthen the Commission's authority from which we benefit today.

Compliance with the Code of Practice was written into the contracts of employment of most journalists and editors. The result – that journalists can and do get sacked for wilfully breaching the Code. High profile examples have included the two 'City Slickers'

share tippers on the Daily Mirror. Another more recent one involved a local journalist who sought an interview in hospital with a car crash victim without going through the proper channels.

References to the Code were written into numerous pieces of legislation, usually at the behest of the industry. This either had the effect of exempting journalists who subscribe to the Code from the provisions of the law – as in the case of financial journalists. Or it directed judges to have regard to the existence of relevant privacy Codes – as in the case of the Human Rights Act. There are other examples in each category. Either way, the effect has been to bolster the authority of the Code and provide reasons other than an attachment to ethical standards for adhering to it. It is important to note that it has been the Code which is referred to in legislation, and not the Commission itself. Moves to recognise the organisation in law would have been strongly resisted.

All this is in addition to two other structural strengths of the system.

First – the industry's owners and managers, through the Press Standards Board of Finance which funds the PCC – have given a very public commitment that it supports self-regulation and the Code. This is a clear signal to those in the industry who work at the coalface of journalism.

Second, the doctrine of editorial responsibility means that there is pressure from the top down in news rooms to abide by the Code – because if as a journalist you breach the Code, it is your boss, the editor, that is criticised and not you. It is the editor who is responsible for ensuring that standards on his or her paper are high. There are no teams of legal 'compliance officers' on newspapers – responsibility rests with those who are publishing the information.

Of course, the Code gets breached and things go wrong. There may be a number of reasons why. Almost always it is the result of an oversight, misunderstanding, or hasty decision. Rarely is it a calculated breach, although we must accept that this could

happen. Sometimes the mistakes are serious, others less so. In serious cases which cannot be resolved amicably, the Commission's sanction does not involve the imposition of fines – which the editor would not themselves have to pay out of their back pocket – but something arguably stronger. It is the public 'naming and shaming'- through a critical adjudication – of an editor. An editor found to be in breach of the Code must publish the Commission's ruling prominently in their own newspaper, without editing or criticising it. They do not refuse to do so. This means that an editor must publish to their readers, rivals and employers the fact that they have failed to live up to the high professional standards to which they are publicly committed. In serious or high profile cases they are inevitably picked up and publicised more broadly.

Our rulings can be as long, short, or rude as we like, depending on the gravity of the case.

Some people think the absence of financial penalties is a weakness. I disagree. Because of its public nature, this sort of personal criticism about an editor's conduct amounts to a far greater sting than a fine would. A fine would be paid by the company and be largely invisible.

Let me give you an example from last year. A government minister complained to us about the Mail on Sunday's coverage of a case involving him and his wife. We agreed with the minister and upheld the complaint. This is how the ruling appeared in the paper – further forward, incidentally, than the original article. And let me read some of the Commission's criticism of the paper. A prominent, and rather savage, public criticism of the editor.

But the PCC is chiefly a conciliation service. It's almost a failure of the procedures if we have to issue a formal rebuke – although sometimes it is inevitable. Precisely because the sanction can be felt so keenly by editors is it possible to obtain offers to resolve complaints in about 98% of cases which involve a breach of the Code.

Statistics often obfuscate the true picture, but let me try to present some clearly. Each year we have 8 – 10,000 telephone enquiries about the application of the Code, from members of the public, public figures, editors and working journalists.

Stripping out the large volume of complaints from third parties, those about matters of taste and decency and those from groups of people who write to us as part of a campaign, the PCC deals with just over a thousand complaints from people directly affected by journalistic behaviour. This is by far the most not just in Europe, but in the world.

We investigate nearly 80% of those, and find that there are almost 500 breaches of the Code each year. In nearly every one of these cases, we obtain offers from the editor concerned to resolve the problem in a proportionate way – through corrections, apologies, undertakings about future conduct, the return or destruction of private information, the publication of letters and so on. When complaints are formally resolved, they are done so to the express satisfaction of the complainant.

Such success would not be possible if the editor didn't care about what would happen if they did not co-operate.

I pause at this point to anticipate an objection. Corrections and apologies are all very well to negotiate, but aren't they just tucked away on page 94 by the racing results when they are published?

Not true. Of course, front page resolutions are difficult to achieve. But early indications from a survey we have carried out – which is yet to be published – show that in nearly three quarters of cases the published resolution appears either on the same page or further forward in the newspaper than the original article.

Such conciliation amounts to a win-win situation. To the benefit of both sides, it avoids the protracted, risky and expensive route of going to court. To the complainant, it has the

advantage of being entirely free. To the industry, it guarantees freedom from the control of content by government agencies.

The flexibility of our structure means that things can be resolved at great speed – sometimes before anything is published. Because the system is based on mutual co-operation and conciliation – not punishment and fines – ‘real time’ problems such as harassment or other physical intrusions can be sorted out immediately.

An imposed Code for which there was no buy-in from the newspapers would have been of no use to the man who contacted us a couple of weeks ago, whose daughter had just tried to kill herself. He was concerned about publication of a story relating to her in a national newspaper the following day. His daughter was traumatised in hospital worrying about what was going to happen to her. He had no time to instruct lawyers, or the experience to negotiate directly with the paper. But our office could quickly put his case to the paper, which gave an undertaking not to publish the story. After we e-mailed him the news he said:

“I cannot thank you enough for all the help you have given my family and Clare, you cannot know how much your e-mail has meant to us. As soon as Clare was told she fell asleep and has remained that way.

Thank you again for all your help”.

The details of this will never be made public, and I have changed the name of the woman involved. But it is a recent example of self-regulation working, invisibly, in action.

There are other, public, examples. Once a published mistake is recognised, the editor’s instinct will now be to put something right – not to hide behind legal arguments. Readers of one leading Sunday newspaper this week have read a correction about a story that was published in the previous edition – when it is still relevant. This is achieved only by quick negotiation and not legal wrangling, and is far more use to the complainant than

obtaining redress long after everyone has ceased to recall the original article. There are thousands of examples of such resolutions on our website.

Of course there are challenges. There are the traditional ones of ensuring that we are well-known, convincing people that we are effective and maintaining the credibility of self-regulation when the default position of many these days is to assume that legal regulation is a cure-all. Then there are new ones such as whether voluntary restraint will be affected by the fast dissemination of information on the internet. And whether self-regulation can adapt to dealing with audio-visual material on newspapers' websites.

But I think that the results do tell a positive story that is worth considering. Annually we sort out hundreds of problems, and give advice in thousands more cases. We rebuke papers and magazines about their conduct when required. We are a free and quick service to use. And we can boast customer satisfaction rates of around 70%.

This is the positive news about the PCC. It is what can be achieved without statutory interference. I hope it is of some interest to you in context of the current debate here. Some of you will disagree with me about the effectiveness of self-regulation. Some may have questions about it. If so, I shall be happy now to take them.

**ENDS**