

Paper by Professor John Horgan, Press Ombudsman

NUJ Biennial Conference

Tullamore Court Hotel

20 October 2007: 8 pm

I am grateful to the NUJ for affording me this opportunity to address you. It is entirely coincidental that one of the major controversies of the past few weeks has been about the media and about coverage by the media of criminal proceedings – a topic I will turn to shortly – but it is probably also true to say that there is, generally, a heightened consciousness of the role of the media in society today, and a greater willingness to explore issues of media coverage in a reflective and positive manner.

In this context, the creation of the Office of the Press Ombudsman and of the Press Council of Ireland means that there is now a new framework within which you will be working. And it is timely that I should talk to you about what exactly that context is, about what we can do, and about what we cannot do.

One important characteristic of the new structure is that it has been established with the full support of the industry – management, editorial and journalistic – and with the active and committed participation of the public. I have been asked is this is a weakness: I believe it is not – it is a strength, inasmuch as there are relatively few self-regulatory press bodies, insofar as I am aware, which combine this multi-faceted structure with majority public participation. The active and committed participation of your own organisation, in particular, marks our Press Council apart from the Press Complaints Commission as currently constituted on the other side of the Irish Sea. That said, I think it is also true to say – and the experience of our early discussions bears this out – that the structure here is not an “us” and “them” affair on either side, but a group of people who share the objectives we have set out for ourselves – to provide a rapid, free and fair means of conciliation and – if necessary – redress for readers of our newspapers and magazines, and also to uphold key journalistic principles and objectives.

Secondly, and no less importantly, importantly, it is independent. That independence is guaranteed legally in relation to the Press Council and in relation to my contract as Press Ombudsman.

What we can do will be to examine all valid complaints against the press rapidly and fairly. We will conciliate where we can, and issue decisions only in cases where it is impossible to reach agreement on a resolution of the issue between reader and newspaper. This conciliation and arbitration process will have two important effects: it will make our print media, which has for many years held other societal institutions to account, also accountable. It will also help to educate the public about the difficulties and constraints of daily, weekly and magazine journalism, so that there can be informed public debate about journalistic standards and conduct.

And all this will take place in the context of the Code of Practice. That Code is itself a vital part of the new structure, and those who familiarise themselves with it – it contains ten points, and is not much longer than the ten commandments – will see that it is a thoughtful and carefully designed Code aimed at striking a fair balance between the rights of readers and the freedom of the press. Unlike the ten commandments, it is not cast in stone and it is not black and white. There will be areas of contention and disagreement. But the openness and transparency which will characterise the new structure will, I believe, secure widespread acceptance, over time, of its value and effectiveness, and will ensure that public debate about the professional practices of the print media will be informed, balanced and constructive.

There are, equally, some things that we cannot do. We can intervene only when someone can show that there is a prima facie case that a newspaper or magazine has been in breach of the Code of Practice. We will not institute inquiries on our own initiative into possible breaches of the Code. We will not examine complaints which are basically related to matters of taste, rather than to breaches of the Code. It may well be true that many breaches of the Code will also involve lapses in taste; but the reverse is not necessarily the case. And it can be argued that occasional lapses in taste are, for the most part, a necessary part of the price we pay for something of considerable value – the freedom of the press itself. Again, we cannot levy penal sanctions, such as fines, on newspapers or magazines.

Some commentators see these aspects of the new structure as weaknesses. But few intelligent people make up their minds before there is any evidence either way. In a culture imbued, as ours sometimes seems to be, with elements of blame and revenge, this criticism might carry more weight. But the aim of this new structure is neither blame nor revenge. We are neither policemen nor judges, and do not seek their powers. Nor are we ambulance chasers. The two simple objectives to which we are dedicated – redress for the public, and the defence of the freedom of the press – can readily be achieved without coercion, and are in no way opposed to each other. This is all the more so because the effectiveness of the new structure will be seen by journalists, editors and managers alike – even and perhaps especially when it criticises some of their decisions or actions – as under-writing the essential seriousness and value of newspapers and magazines in an era of media fragmentation.

A final general point is that the occasional similarities between the regulatory structure which has been adopted for Ireland and that which obtains in other jurisdictions does not imply either that we have the same problems or that we might reach similar solutions. I would like to think that our standards here are already good, and there is some evidence for that in the fact that newspaper circulation figures on this island are remaining remarkably stable while those on the other side of the Irish Sea appear less healthy. There is also a great openness towards the ideal of effective self-regulation as a method of dealing with inevitable mistakes. Much of what our print media publish gives rise to no complaint – indeed, the major complaint that might be made about our newspapers could be that they are too predictable, rather than that they are unethical or unprofessional. But when newspapers make mistakes, they do so, inevitably, in the full glare of the spotlight of public opinion; and that is why the remedy for such mistakes must be equally public, and prompt.

Two of the key issues for the future will be those of privacy and the public interest. There is hardly any area today which is so sensitive as privacy in the context of the relationships between the press and those about whom they write. It will not be an easy task to get it right, but it is a task in which we are all involved.

The Code of Practice, borrowing from the European Convention on Human Rights, says clearly that privacy is a human right, while at the same time it makes it clear that even this right can be abrogated in certain circumstances. So far, so good – but what are those circumstances? The Code makes some suggestions, but is clearly not exhaustive. Are there circumstances, for example, in which private and public individuals have exactly the same rights - or, if not, why not, and where, and when are they different? How do you decide what is a “private place”? If private individuals become public persons for a brief space of time, because of some extraordinary set of circumstances, can they expect to re-acquire the rights of private individuals after a period of time? The debate is an ongoing one, and not only here. In France and in Germany, for example, the distinction between “public” and “private” is coming to be interpreted less in terms of the category of person, and more in terms of the nature of the activity involved, or of the information in question.

All this sounds like fertile grounds for lawyers, and indeed it is. I read an article on privacy in a legal journal at the weekend; it was 99 pages long, had several hundred footnotes, and even at that it did not come to the sort of conclusions that would be of much assistance to any working journalist or photographer. I do not expect that you will all be carrying it in your back pockets.

But you, and the Ombudsman, and the Press Council, are not in the business of making or breaking laws: indeed, neither the Ombudsman or the Press Council will get involved in any case which is the subject of legal action. What we can offer is the guidance of the Code – which may, with the benefit of experience, be supplemented in time by guidelines – and an assurance that complaints about possible invasions of privacy will be handled with total fairness and impartiality and, I would hope, a dollop of common sense.

Journalists, in this new context, will be wise not to over-estimate the affection in which they are held by the general public. The lack of any structure of accountability in the past has tended to insulate journalists from much criticism of their work, or to persuade them that it lacked foundation. The intensely hierarchical nature of many newspaper organisations, in addition, created an unwillingness to admit mistakes (although the legal system undoubtedly contributed to this tendency as well). In the

future, journalists, like members of every other professional group, will no longer be able to count on public acceptance and respect that has not been earned. They will earn that acceptance and respect insofar as they continue to serve the public interest, and serving the public interest is ultimately not only the best, but perhaps also the most persuasive, argument in favour of the freedom of the press itself..

On the other side, the public will perhaps, as this new structure makes its presence felt, come to realise that newspaper journalists are often doing an extraordinarily difficult job to the best of their ability; that although mistakes can and will be made, there are more cock-ups than conspiracies; and that a willingness to correct errors and to apologise for mistakes can be seen as a strength to be admired and not as a weakness to be derided – as well, of course, as being an incentive to get it right next time.

Thirty years ago, David Broder of the *Washington Post* put it very aptly when he advised his fellow journalists:

“I would like to see us say over and over until the point has been made... that the newspaper that drops on your doorstep is a partial, hasty, incomplete, inevitably somewhat flawed and inaccurate rendering of some of the things we heard about in the past 24 hours... distorted despite our best efforts to eliminate gross bias by the very process of compression that makes it possible for you... to read it in about an hour. If we labelled the paper accurately then we would immediately add: But it's the best we could do under the circumstances, and we will be back tomorrow with a corrected updated version.”

In other words: be careful about the rush to judgment – a piece of advice that is of course as applicable to the newspapers as to their critics. And this is the context in which it is worth looking at the debate initiated by Mr. Justice Carney's speech at UCC last week.

One interesting aspect of Mr. Justice Carney's speech – which raised many legal issues completely outside my terms of reference and which I will therefore not even

attempt to discuss – were his references to an entity he described as “the tabloid media.”

To the best of my knowledge, the first newspaper in Ireland to be described as a tabloid was the *Irish Independent*, whose founding editor, Harrington, told his reporters “to approach the work with a perfectly open mind . . . and confine [yourselves] as a rule to reporting facts or speeches in a fair and impartial way, following our usual practice of not giving things fully.” *Following our usual practice of not giving things fully*. Within days of the launch of that newspaper in January 1905, Mr Patrick Byrne, JP, Chairman of Enniscorthy Rural District Council, described it as “a bright, newsy paper, a veritable boon for the busy man: *the day’s news in tabloid form*.” This revolution in journalism – the new practice of “not giving things fully” rapidly became a feature of every newspaper, regardless of format: in this sense, all journalists write for “tabloids”; the size and shape and style of newspapers may differ, but the principles of selection and compression are universal.

In the context of the current debate, a number of things can be said in the interests of clarifying some of the issues and some of the terminology, at least insofar as my Office is concerned.

- Good tabloid journalism is as vital to the health of our democratic system as good broadsheet journalism;
- The Press Ombudsman was not appointed, in the words of a comment in one of our distinguished contemporaries, as someone who would be “putting manners on tabloid behaviour.” He has been appointed to apply the Code of Practice to all newspapers on foot of readers’ complaints, and to defend good journalism in all newspapers;
- Journalists everywhere should, on behalf of their professional colleagues, be concerned about any tendency to regard the word “tabloid” as a synonym for biased, unprofessional or unethical journalism;
- Neither professional lapses nor professional triumphs are confined to newspapers of any particular shape, size or style;

- The Code of Practice of the Press Council is the same for all journalists, wherever they work, and I am sure that journalists who work on “tabloid” newspapers would not wish it otherwise; and, last but not least
- Under the Code of Practice, all newspapers will be under an obligation to “strive to ensure that ... the presumption of innocence is respected.”

One of the lawyers involved in recent events made a very valuable observation when he remarked that, as well as the courts, there was “ a role for the public, the media, and society, who are also participants in the justice system”. In other words, we are talking here not about a crude instrumentalism, but about a web of relationships, pressures, decisions, values and indeed emotions which all combine to shape society’s responses to complex issues like justice, retribution and rehabilitation.

Few of these elements fall within the competence of the Press Council and the Press Ombudsman. Public opinion, in particular, can be volatile, and even atavistic, on the highly emotive subject of crime and criminals. And if newspaper coverage at times reflects or reports such opinions, it is not necessarily the case that it is responsible for them.

At the same time, journalists might also consider that the endorsement by public opinion of any particular editorial stance is perhaps not always an unmixed blessing, except in purely commercial terms; and that newspapers, in common with all media, have opportunities to lead, as well as temptations to follow, public opinion in this and many other areas.

Issues like these will undoubtedly be teased out in more detail by the Office of the Ombudsman and the Press Council in the months and years ahead, on the basis of specific complaints. In the light of this, it would be inappropriate for me to say any more on the topic, apart from emphasising that any complaints to my Office or to the Press Council about newspapers’ coverage of crime, especially where it impacts on people who are vulnerable for any reason, will be handled strictly within the framework of the Code of Practice.

Finally, it is important to point out that trust and authority are hard-won attributes of media; that effective self-regulation is a vital instrument in the maintenance of these key attributes; that trust, once lost, is often difficult to regain; and that the maintenance and development of appropriate professional standards is a continuing task for journalists themselves as much as for the Press Council and the Ombudsman.